

Title IX Sexual Harassment Policy (Policy)

-and-

Grievance Procedures for Responding to Complaints of  
Title IX Sexual Harassment (Procedures)

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## INTRODUCTION

The American Museum of Natural History (the “Museum”) is committed to fostering an environment that is free from sexual harassment, as that term is defined in Title IX of the 1972 Education Amendments (“Title IX”), and the subsequent regulations released by the Department of Education’s Office of Civil Rights (“OCR”).

**Only** incidents falling within the regulations’ definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through this Title IX Sexual Harassment Policy and Grievance Procedures for Responding to Title IX Sexual Harassment (“the Policy”) defined below.

The Museum has separate policies and procedures for allegations of sexual and other misconduct that do not implicate Title IX of the Education Amendments of 1972, including the Museum’s staff Anti-Harassment Policy and the Richard Gilder Graduate School Gender-Based Misconduct Policy Involving Students and Procedures for Responding to Complaints of Gender-Based Misconduct By and Against Students (“RGGS GBM Policy”).

Individuals who experience Title IX sexual harassment can file formal complaints and participate in the formal grievance procedures set out in more detail below.<sup>1</sup> Individuals found responsible will be sanctioned in accordance with this Policy. Individuals who experience Title IX sexual harassment may also be able to pursue criminal and civil processes, in addition to or instead of the procedures under this Policy.

The Museum does not discriminate on the basis of sex in the educational programs or activities that it operates, and the Museum is required by Title IX and accompanying federal regulations not to discriminate in such a manner. This requirement not to discriminate in education programs or activities extends to admission and employment decisions. The Museum Title IX Coordinator’s contact information is immediately below:

Benjamin Marzolf, Director Human Resources & Title IX Coordinator  
The American Museum of Natural History  
200 Central Park West, Hall of Meteorites, Section 6, First Floor

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<sup>1</sup> As noted above, the Museum has separate policies and procedures in place for allegations of misconduct that do not implicate Title IX of the Education Amendments of 1972 or its accompanying federal regulations.

Phone: (212) 769-5316

Email: [bmarzolf@amnh.org](mailto:bmarzolf@amnh.org)

Any person may report sex discrimination, including but not limited to Title IX sexual harassment as that term is defined below, in person, by mail, by telephone, or by electronic mail, using the contact information listed above for the Title IX Coordinator. 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 Title IX Coordinator. Questions about the application of Title IX and accompanying federal regulations may be referred to the Museum's Title IX Coordinator, or to the Assistant Secretary of the Department of Education's Office of Civil Rights at 1-800-421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov), or both.

This Policy and the accompanying Grievance Procedures are part of a multifaceted approach toward eliminating Title IX sexual harassment in the Museum community. This approach includes: (1) training programs; (2) services and resources for those affected by Title IX sexual harassment; (3) accessible, prompt, and fair methods of investigation and adjudication of reports of Title IX sexual harassment; and (4) protections designed to prevent recurrence.

Nothing in the Policy or the Procedures shall be construed to abridge academic freedom and inquiry, principles of free speech, or the Museum's educational mission.

**Effective Date:** This Title IX Sexual Harassment Policy will only apply to formal complaints of sexual harassment that occurred on or after August 14, 2020. Complaints and matters alleging misconduct that occurred prior to August 14, 2020, will be investigated and adjudicated according to the Museum's pre-existing policies, including but not limited to the staff Anti-Harassment Policy or the RGGS GBM Policy.

**Revocation by Operation of Law:** Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Sexual Harassment Policy be revoked in this manner, any conduct covered under the Title IX Sexual Harassment Policy shall be investigated and adjudicated under the existing Anti-Harassment Policy, the RGGS GBM Policy, or any other applicable policies.

**Note:** While this Policy and the Procedures identify the Museum office or employee who will typically perform certain roles or duties, the Museum may designate other Museum offices or employees to perform any roles or duties described in the Policy or Procedures. Additionally, any reference to “days” in this Policy and these Procedures refers to business days. “Business days” means Monday through Friday, from 9:00 a.m. - 5:00 p.m., excluding days on which the Museum’s administrative offices are closed.

## **SCOPE OF THE POLICY AND PROCEDURES**

This Policy and the Procedures govern allegations by or against individuals alleging Title IX sexual harassment. It applies to incidents that occur within the United States<sup>2</sup> that:

1. Occur on Museum premises or in connection with Museum sponsored educational programs or activities; or
2. Create, contribute to, or continue a hostile work or educational environment for Museum employees and students, such that the conduct is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Museum’s educational programs or activities, even if the incident giving rise to such a hostile environment occurred off-site.

Museum sponsored educational programs and activities include locations, events, or circumstances over which the Museum exercises substantial control over both the Respondent and the context in which the harassment occurred. This includes, but is not limited to, participation in field work (within the United States), conferences, events and meetings related to work at the Museum or off-site.

This Policy and the Procedures govern incidents involving both students and employees of the Museum. It also applies to postdoctoral trainees, as well as volunteers, visiting scholars, and research associates while they are working at the Museum, regardless of their length of stay (all of whom, with the Museum staff, constitute the “Museum community”).

The Policy applies regardless of a person’s sex, sexual orientation, age, color, race, alienage or citizenship status, religion, pregnancy, genetic information, disability, current or former participation in the uniformed services, status as a veteran, domestic violence status, or other federally protected status.

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<sup>2</sup> Allegations of sexual harassment that occurred outside the United States are not covered by Title IX of the Education Amendments of 1972. Allegations of misconduct that occurred outside the United States, whether sexual misconduct or otherwise, may still be reviewed under the Anti-Harassment Policy, the RGGs GBM Policy, or other Museum policies and procedures, depending on the nature of the allegations and affiliation of the parties.

The Museum's Department of Human Resources has overall responsibility for the Policy and Procedures and has been designated as the institutional Compliance Office for Title IX, Section 504 of the Rehabilitation Act, and other equal opportunity, nondiscrimination laws. The Department of Human Resources may designate other offices or employees to perform any roles or duties described in the Policy or Procedures.

The Museum also has other policies for faculty, staff and other individuals working at or with the Museum for misconduct which does not implicate Title IX of the Education Amendments of 1972 or accompanying regulations. Specifically, allegations of misconduct involving students that do not meet the threshold for Title IX sexual harassment are covered under the RGGGS GBM Policy. Allegations of misconduct involving Museum faculty and staff that do not meet the definition of Title IX sexual harassment, including but not limited to allegations of discriminatory harassment, are covered under the Museum's Anti-Harassment Policy. These policies are available on the internal Museum Staff Portal, or alternatively, by contacting the Museum's Title IX Coordinator.

- Procedures for addressing complaints of bullying or harassment (other than Title IX sexual harassment) by or against students are addressed in the RGGGS and MAT Handbooks for Students and Faculty on Academic and Conduct Policies and Procedures and should be brought to attention of the Department of Human Resources, the Dean of RGGGS or the Senior Vice President overseeing the MAT Program.
- Procedures for addressing complaints of bullying or harassment (other than Title IX sexual harassment) by or against employees are addressed in the Staff Anti-Harassment Policy.
- Additionally, the Museum has separate policies of standards of conduct and safety that apply to Museum staff and mentors with regard to pre-K-12 and undergraduate participants in educational programs, and for ad hoc interns and those in regular internship programs.

Employees, students, and third parties may contact Human Resources to inquire about their rights under any of these policies, request assistance, seek information about filing a complaint, or report conduct or behavior that may violate these policies. The relevant contact information for Human Resources can be found after the Procedures at the end of this document.

## Title IX Sexual Harassment Policy (“POLICY”)

### Definitions

- *Actual Knowledge* means notice of Title IX sexual harassment or allegations of Title IX sexual harassment to the Museum’s Title IX Coordinator or any official of the Museum who has authority to institute corrective measures on behalf of the Museum. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the Museum with actual knowledge is the Respondent (even if the Respondent’s knowledge would otherwise constitute actual knowledge under this definition). The mere ability or obligation to report Title IX sexual harassment or to inform an individual about how to report Title IX sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the Museum. Notice includes but is not limited to, a report of sexual harassment to the Title IX Coordinator as described below.
- *Affirmative Consent* is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.
  - Consent can be given by words or actions, as long as those words or actions express willingness to engage in sexual contact or activity. It is important not to make assumptions. If there is confusion or ambiguity, participants in sexual activity need to stop and verbally clarify each person’s willingness to continue.
  - Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, coercion, or from a person who is incapacitated (as defined below).
  - Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
  - Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
  - Silence or the lack of resistance, in and of itself, does not demonstrate consent.
  - Consent may be initially given, but can be withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.
  - Previous relationships or previous consent for sexual activity is not consent to sexual activity on a different occasion.
  - The definition of consent does not vary based upon a participant’s sex, sexual orientation, or relationship status.

### *How Drugs and Alcohol Affect Affirmative Consent*

- Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given.
  - The impact of alcohol and other drugs varies from person to person. Warning signs that a person may be incapacitated or approaching incapacitation as a result of alcohol or drug use may include but are not limited to: slurred or incomprehensible speech, vomiting, unsteady gait, combativeness, or emotional volatility.
  - Whether sexual activity with an incapacitated person constitutes Title IX sexual harassment may depend on whether the individual knew or should have known of the other party's incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, reasonable person in the individual's position.
  - Being intoxicated, impaired or incapacitated by alcohol or other drugs is not an excuse for committing a policy violation and does not diminish anyone's responsibility to obtain informed and freely-given consent.
  - The use of alcohol or other drugs does not make someone responsible for being subjected to Title IX sexual harassment.
  - Individuals under 17 years of age cannot consent to sexual activity under New York State Law, and therefore are considered incapacitated for purposes of this policy.
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- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.
  - *Decision-maker(s)* means one of the following: (i) the individual(s) responsible for reviewing the Investigative Report, presiding over the hearing, and issuing a decision regarding responsibility following a hearing, as described more fully in the procedures below; or (ii) the individuals responsible for reviewing any appeal submitted after a hearing, provided that the decision-maker(s) for the appeal are not the same person as the decision-maker(s) that reached the determination regarding responsibility at a hearing, as described more fully in the procedures below.
  - *Educational program or activity* includes locations, events, or circumstances over which the Museum exercises substantial control over both the Respondent *and* the context in which the alleged Title IX sexual harassment occurred.



- *Formal complaint* means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that the Museum investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the educational program or activity of the Museum with which the formal complaint is filed.<sup>3</sup> A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party, can still investigate the allegations, and must still refrain from any conflicts of interest and comply with required trainings as detailed above in the Introduction section of the Policy.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.
- *Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the Museum’s educational programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Museum’s educational environment, or deter Title IX sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the Museum, or other similar measures. The Museum will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the Museum to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
- *Title IX Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

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<sup>3</sup> If at the time of filing a formal complaint the Complainant is not currently participating in or attempting to participate in an educational program or activity of the Museum, the formal complaint must be dismissed, as described more fully below. However, alternative Museum policies and procedures, including but not limited to the RGGG GBM Policy or the Staff Anti-Harassment Policy, may be applicable.

- (1) An employee of the Museum conditioning the provision of an aid, benefit, or service of the Museum 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 Museum's education program or activity; or
- (3) "Sexual assault," "domestic violence," "dating violence," or "stalking," as those terms are defined immediately below:

- **Sexual assault.** Sexual assault is sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to: (i) intentional touching of another person's intimate parts without that person's consent; or (ii) other intentional sexual contact with another person without that person's consent; or (iii) coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or (iv) rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.
- **Domestic Violence.** The use or threat of physical violence or sexual assault directed toward (1) a current or former spouse or intimate partner; (2) a person with whom one shares a child; or (3) anyone who is protected from the Respondent's acts under the domestic or family violence laws of New York. This includes behavior that seeks to establish power and control over another person by causing fear of physical or sexual violence. Domestic violence can be a single act or a pattern of behavior, depending on the frequency, nature, and severity of the conduct. Examples of this type of violence include hitting, kicking, punching, strangling, or other violent acts, including violence or threats of violence to oneself under certain circumstances, violence or threats of violence to one's partner, or the family members, friends, pets, or personal property of the partner.
- **Dating Violence.** The use or threat of physical violence or sexual assault that is directed toward a person who is or has been in a social relationship of a romantic or sexually intimate nature with the Respondent. This includes behavior that seeks to establish power and control over another

person by causing fear of physical violence or sexual assault. Dating violence can be a single act or a pattern of behavior, depending on the frequency, nature, and severity of the conduct. Examples of this type of violence include hitting, kicking, punching, strangling, or other violent acts, including violence or threats of violence to oneself under certain circumstances, violence or threats of violence to one's partner, or the family members, friends, pets, or personal property of the partner.

- **Stalking.** A course of unwanted attention that is repeated or obsessive, directed toward an individual or a group and that is reasonably likely to cause alarm, fear or substantial emotional distress. Stalking may take many forms, including lying in wait for, monitoring, and/or pursuing contact. Stalking may occur in person or through communications such as telephone calls, text messages, unwanted gifts, letters, e-mails, surveillance, or other types of observation.

## **POLICY ON CONSENSUAL RELATIONSHIPS**

### **Consensual Relationships**

The Museum does not have a prohibition against consensual romantic relationships between colleagues in the Museum Community, and recognizes that many people meet their partners through a shared interest in their professional and academic pursuits. The Museum expects individuals to act professionally, and to consider the appropriate time and place for romantic activities. Sexual activity is prohibited on Museum premises. However, consensual sexual relationships between those in positions of authority over students, staff or volunteers can compromise the work and educational environment, and are prohibited. Such relationships, even if consensual, are potentially exploitative because of the imbalance of power inherent in the relationships. They raise concerns such as conflict of interest and fairness of treatment to the individual involved and/or other individuals, and they present potential legal liability for the Museum as an institution and potential personal liability for the individual in the position of authority.

### **Prohibited Consensual Relationships between Staff or Volunteers**

The Museum prohibits individuals from having consensual sexual relations with a staff member or volunteer over whom they exercise supervisory authority or a supervisory or evaluative function, or where such a relationship could raise perceptions of favoritism. Anyone in the position of directly or indirectly managing other individuals is considered a supervisor with respect to the individuals they oversee within their department or scientific division.

Should an individual foresee entering into a consensual sexual relationship which would or may be covered by this policy, he or she must promptly alert the head of his or her department or scientific division and Human Resources and cooperate in making alternative arrangements necessary to remove his/her influence over supervisory/evaluative decisions affecting the staff member or volunteer. The specific arrangements, including whether the supervisor or the subordinate are moved or their duties adjusted, will depend on the circumstances of the relationship and the capabilities of the parties involved.

Should a consensual sexual relationship with a staff member or volunteer lead to an allegation of sexual misconduct, under this policy, the Museum will address and resolve the allegation in accordance with the procedures described herein.

### **Prohibited Consensual Relations with Students**

No member of the Museum Community shall request or accept sexual favors from, engage in a romantic or sexual relationship with, or have any sexual contact with any student, intern or mentee at the undergraduate level or younger in any general education or internship program at the Museum, whether or not such favors, relationship or contact are consensual. Further, no member of the Museum Community shall request or accept sexual favors from, engage in a romantic or sexual relationship with, or have any sexual contact with any graduate student, intern or mentee who is enrolled in a course taught by that member of the Museum Community or who is otherwise subject to that individual's academic supervision. Academic supervision includes teaching, academic advising, committee membership for a thesis, dissertation, or any other RGGGS committee, supervising research or educational activities, grading and mentoring. RGGGS graduate and undergraduate students with concerns about compliance by others with this policy, including perceived instances of favoritism on the basis of consensual intimate relationships, may report their concerns to the Dean of RGGGS and/or the RGGGS Director of Administration. Graduate and other students in the MAT Program may report their concerns to the Senior Vice President overseeing the MAT Program. Staff with concerns about compliance by others may report these concerns to Human Resources.

### **NOTE: DISABILITY ACCOMMODATIONS**

#### *Generally*

This procedure does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation

Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedures. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

#### *Requests for Reasonable Accommodations During the Title IX Grievance Procedure*

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Museum personnel responsible for accommodation requests to provide support to students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

## **PROCEDURES FOR RESPONDING TO FORMAL COMPLAINTS OF TITLE IX SEXUAL HARASSMENT (“GRIEVANCE PROCEDURES”)**

This section first describes individuals’ rights throughout the resolution and disciplinary processes, available resolution options, and other important procedural information, including about privacy, advisors, and time frames.

#### Rights of the Complainant and Respondent

In order to provide accessible, prompt, and fair methods of resolution and/or investigation of reported incidents of Title IX sexual harassment, the Museum has developed a series of alternative resolutions options, as well as grievance procedures for investigation and adjudication of formal complaints. Throughout these procedures, both the Complainant and the Respondent have the right to:

- Respect, dignity, and sensitivity
- Appropriate support from the Museum
- Privacy to the extent possible and consistent with applicable law and Museum policy
- Information about this Title IX sexual harassment policy
- The presence of an advisor throughout the process, subject to the specifics provided below
- Participate or decline to participate in an investigation (however, a decision not to participate in an investigation either wholly or in part will not prevent the process from proceeding with the information available)

- A prompt and thorough investigation of the allegations
- An opportunity to review evidence that is directly related to the allegations in the formal complaint, including evidence upon which the Museum does not intend to rely in reaching a determination regarding responsibility, and inculpatory and exculpatory evidence, following the investigation and before a hearing, if applicable. The evidence will be provided to each party and their advisor, if any, in an electronic format, and the party will have at least ten (10) days to submit a written response which the Investigator will consider prior to completion of the Investigative Report
- Participate or decline to participate in a hearing (however, a decision not to participate in a hearing and be cross-examined results in the hearing decision-maker(s) being prohibited from relying upon any prior statement made by that individual)
- Conduct cross-examination in a hearing through their advisor and be subject to cross-examination by the opposing party's advisor, subject to the limitations below.
- An opportunity to refer to copies of any evidence from the investigation during the hearing, including during cross-examination, if applicable
- An opportunity to review, at least ten (10) days prior to a hearing, if applicable, an Investigative Report that fairly summarizes relevant evidence. The Investigative Report will be provided to each party and their advisor, if any, in an electronic format, and the party can submit a written response which the hearing decision-maker(s) will consider prior to reaching a determination
- An opportunity to challenge investigator(s), hearing decision-maker(s), and members of an Appeal Panel (where applicable) for bias or a possible conflict of interest
- Refrain from making self-incriminating statements
- An appeal of any sanctions imposed
- Notification, in writing, of the case resolution, including the outcome of any appeal
- Report the incident to law enforcement at any time
- Understand that information collected in the process may be subpoenaed in criminal or civil proceedings.

A handout that lists these rights will be provided to both the Complainant and the Respondent, along with the NYS Student's Bill of Rights (for student Complainants and Respondents), during each individual's initial meeting with the Title IX Coordinator/investigator, as applicable.

## RESOURCES

The Museum encourages all individuals affected by Title IX sexual harassment to seek immediate assistance. Seeking assistance promptly may be important to ensure a Complainant's physical safety or to obtain medical care, emotional support, or other support; it may also be necessary to preserve evidence, which can assist the Museum and/or law enforcement in responding effectively. Assistance is available 24 hours a day, 7 days a week. The Resources listed at the end of this document provide contact information for people at the Museum and community resources available to help.

## REPORTING TITLE IX SEXUAL HARASSMENT AND CONFIDENTIALITY

The Museum encourages individuals to report Title IX sexual harassment to the Title IX Coordinator. Individuals may meet with the Title IX Coordinator to learn more about the process before submitting a formal complaint. The Museum respects the privacy of those reporting Title IX sexual harassment and participating in the process. Federal and state laws, however, impose reporting obligations on certain employees that, in some circumstances, can require them to share information from a report of Title IX sexual harassment with law enforcement, the Title IX Coordinator, the Department of Security and Safety, or others.

### Notification of Rights at the Time of First Disclosure; Explanation of Privacy & Confidentiality

At the first instance of disclosure by a Complainant to a "non-confidential" Museum representative, the following information shall be presented to the reporting individual:

"You have the right to make a report to the Department of Security and Safety, local law enforcement, or State Police or choose not to report; to report the incident to the Museum; to be protected by the Museum from retaliation for reporting an incident; and to receive assistance and resources from the Museum."

### Title IX Coordinator

The Museum's Title IX Coordinator is responsible for overseeing the Museum's response to reports of Title IX sexual harassment and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The Title IX Coordinator oversees the administration of this Policy and the Procedures in a neutral and equitable manner.

The Title IX Coordinator supports and provides assistance to individuals affected by Title IX sexual harassment. The Title IX Coordinator does not act as an advocate, but is a neutral resource available to everyone studying or working at the Museum. The Title IX Coordinator is responsible for referring

individuals to available resources, offering appropriate protections and supportive measures, and coordinating the grievance procedures set out in this Policy. The Title IX Coordinator can provide support and assistance immediately following an incident involving Title IX sexual harassment, and may assist individuals seeking accommodations or supportive measures, including cases where a Complainant chooses not to engage in the process or when the Respondent is not affiliated with the Museum.

#### Reporting Title IX Sexual Harassment to Law Enforcement

As noted above, individuals may, in their discretion, choose to report Title IX sexual harassment to the New York City Police Department, the Manhattan District Attorney's Office, or to the local law enforcement agency where the misconduct occurred if the misconduct occurred outside of New York City. The Museum is required to report instances of violent felony offenses occurring on Museum premises to the New York City Police Department, though this can be done on an anonymous basis.

The Museum process and criminal justice system work independently from one another. Law enforcement authorities do not determine whether a violation of this policy has occurred, and the criminal justice system uses different standards related to proof and evidence. Any questions about whether a specific incident is potentially a crime should be addressed to law enforcement. Individuals may consult the chart at the end of this Policy for further information about the differences between the Title IX sexual harassment and criminal processes.

The Offices of General Counsel and Human Resources, in consultation with the Department of Security and Safety, and the other resources in the Resources listing, are familiar with New York City and New York State law enforcement processes and can explain what happens when Title IX sexual harassment is reported to law enforcement.

The Title IX Coordinator can explain how to report sexual assault and other forms of Title IX sexual harassment to law enforcement, and a manager from the Department of Security and Safety or the Title IX Coordinator can accompany any individual requesting support to the Police Department or District Attorney's Office. However, they cannot serve as a substitute for legal advice on these matters.

#### Confidentiality: Confidential & Non-Confidential Counseling Resources

Individuals who are confidential resources will not report crimes to law enforcement or Museum officials without permission, except for extreme circumstances, such as a health and/or a safety emergency. Even



when the recipient of a report of Title IX sexual harassment has an obligation to report to others (and are “non-confidential” under this Policy), such individuals will endeavor to protect and respect the reporting individuals’ privacy to the greatest extent possible and share information only on a need-to-know basis. The information provided to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution. For more information on confidentiality, see the section below.

Museum employees and students enrolled in RGGS seeking confidential counseling in connection with allegations of Title IX sex-based discrimination are encouraged to use a variety of resources. For a complete list of support resources and contact information, please review Appendix C at the end of this policy or visit the Staff Portal for the most up-to-date information.

For students, the Museum has designated Student Affairs Facilitator(s) of the Ph.D. in Comparative Biology and MAT programs as advising resources. *The Student Affairs Facilitator(s) are not, however, licensed counselors or confidential resources for allegations of Title IX sex-based discrimination.*

#### Requesting Confidentiality in Connection with a Report to the Title IX Coordinator

An individual who discloses potential Title IX sexual harassment to the Title IX Coordinator may request that the Title IX Coordinator not disclose their identity to anyone else, including the person who allegedly committed the misconduct. While such a request for confidentiality may limit the ability to investigate and respond to the reported misconduct, the Title IX Coordinator, in consultation with the Museum’s Office of General Counsel, will consider the request in light of the commitment of the Museum to provide a safe and non-discriminatory environment for all individuals within the Museum community, and will honor the request whenever possible. The Title IX Coordinator will promptly notify the individual making the request whether the Museum will be able to honor it.

Importantly, the Title IX Coordinator can still provide supportive measures, described below, while still maintaining the confidentiality of the Complainant. Reports submitted that do not identify the Complainant or are submitted anonymously will require the signature of the Title IX Coordinator to initiate an investigation and adjudication. If the Title IX Coordinator files a Title IX formal complaint in lieu of the Complainant and there is an investigation or other resolution as a result of this Title IX formal complaint, written notice of allegations will be sent to both parties outlining the allegations, and will include the identity of the parties if known, as required by the May 2020 Title IX regulations. In rare instances, the Title IX Coordinator may determine that an investigation or other resolution process should proceed, even

though the written notice of allegations does not include the Complainant's identity. However, if a Complainant still refuses to participate in the resolution process, the Museum may be severely limited in its ability to address the allegation.

Whether or not the Title IX Coordinator is able to grant a request to keep the Complainant's identity confidential, the Title IX Coordinator will reveal information about investigations and disciplinary proceedings related to Title IX sexual harassment only to those who need to know in order to carry out their duties and responsibilities. In all cases, the Title IX Coordinator will take appropriate steps designed to counteract the effects of the alleged Title IX sexual harassment, prevent its recurrence, and provide supportive measures and accommodations for the parties involved. This may include academic and work accommodations, increased monitoring, supervision, or security at locations or in connection with activities where the alleged misconduct occurred, and training and educational materials for the campus community. If there is reason for concern about possible retaliation or harm, the Title IX Coordinator will take protective measures in consultation with the affected parties.

#### Supportive and Interim Measures

The Museum can provide supportive measures at any time and can impose certain interim measures after a formal complaint has been filed.

#### *Supportive Measures*

The parties may request supportive measures (as defined in the Definitions section) even in cases where an investigation is not undertaken or either party has declined to participate in the Museum grievance process or the criminal process.

The parties may also request a prompt and reasonable review of the need for and terms of any supportive measure that directly affects them, and may submit evidence in support of their request. Requests for review of the supportive measure(s) shall be submitted in writing to the Title IX Coordinator.

The Title IX Coordinator will evaluate any request for supportive measures (including a party's request for review of the terms of any supportive measure directly affecting them) in light of the circumstances and information available at the time of the request. If requested supportive measures cannot be granted or changed, the Title IX Coordinator (following review by the Office of General Counsel or other appropriate Museum administrators) will provide an explanation, in writing, to the individual.

### *Interim Measures*

An individual who has experienced Title IX sexual harassment may also be entitled to obtain remedies under applicable law, such as an order of protection. The Title IX Coordinator and the Museum's Department of Security and Safety can assist an individual in contacting law enforcement or legal service organizations to learn about these remedies.

The Museum may also take action through directives (known as "interim measures") to ensure the safety of all parties involved, and to protect the integrity of a pending investigation or disciplinary process, subject to any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as described above. Interim measures include, but are not limited to:

- Restricting a Respondent's access to Museum buildings and/or Museum activities;
- Emergency removal of a student Respondent from a Museum education program or activity, following an individualized safety and risk analysis to determine that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment which justifies removal, and providing the Respondent with notice and an opportunity to challenge the decision immediately following the removal;
- Placing a non-student employee Respondent on administrative leave during the pendency of the grievance procedures described below.

Failure to comply with interim measures or other Museum directives is a violation of this Policy and may lead to disciplinary action as described in this Policy.

Following the filing of a formal complaint of Title IX sexual harassment, the Title IX Coordinator will provide written notice to the individuals involved in the incident, describing any necessary interim measures, as well as any supportive measures and resources available to them. The Title IX Coordinator and the Museum will provide notice about these measures only to those who need to know in order to make the measures effective. Complainants or Respondents may request a prompt and reasonable review of the need for and terms of any interim or supportive measure that directly affects them and may submit evidence in support of their request, as described above.

### Other Information About Reporting

The Museum does not limit the time for submitting a report of Title IX sexual harassment,<sup>4</sup> but a report or formal complaint should be made as promptly as possible following the alleged misconduct to ensure the Museum can investigate appropriately. The Museum's ability to investigate and respond effectively may be reduced with the passage of time and the loss of reliable evidence. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of Title IX sexual harassment. The Museum may decline to investigate when the Respondent is no longer part of the Museum community, though the Museum will still work to offer supportive measures requested by the Complainant. In cases where Title IX sexual harassment is reported to the Title IX Coordinator by someone other than the individual who was subjected to the alleged misconduct, the Title IX Coordinator will, in most situations, promptly notify the potential Complainant that a report has been received. This Policy and the Grievance Procedures will apply in the same manner as if the affected individual had made the initial report. The Title IX Coordinator will make every effort to meet with the affected individual to discuss available options and on-campus and off-campus resources. Reports from anonymous sources will be treated in a similar fashion.

### Student Amnesty for Alcohol and/or Drug Use; Non-Museum Respondents; Public Awareness Events & Forums

A student (including a bystander), acting in good faith, who discloses any incident of Title IX sexual harassment to a Museum staff member or law enforcement will not be subject to disciplinary action for their own potential violations of alcohol and/or drug policies occurring at or near the time of the Title IX sexual harassment.

The Title IX Coordinator will, if possible and requested, investigate reports of incidents involving members of the Museum community that also involve persons who are not members of the Museum community or whose identity is not known, if such incidents are otherwise governed by this Policy, and will assist the affected individuals in identifying appropriate supportive resources. If this policy is inapplicable, the allegations may be reviewed under other Museum policies such as the Anti-Harassment Policy or RGGS GBM Policy.

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<sup>4</sup> As noted above, this Title IX Sexual Harassment Policy will only apply to formal complaints of sexual harassment that occurred on or after August 14, 2020. Complaints and matters alleging misconduct that occurred prior to August 14, 2020, will be investigated and adjudicated according to the Museum's pre-existing policies, including but not limited to the staff Anti-Harassment Policy or the RGGS GBM Policy.

The Museum supports public awareness events and other forums. However, the disclosure of incidents of Title IX sexual harassment at such events or forums is not considered a formal complaint to the Museum for purposes of triggering a Title IX investigation of a particular incident, but the individual(s) could still be eligible for and seek out supportive measures.

### Privacy

Information about allegations of Title IX sexual harassment will be revealed only to those who need to know the information in order to carry out their duties and responsibilities. The Museum will inform all individuals participating in an investigation or proceeding that they are expected to maintain the privacy of the process. Additionally, once an Investigative Report and exhibits have been drafted, parties will be required to sign a Confidentiality Agreement that prohibits the sharing or distribution of the Investigative Report or exhibits outside of the Title IX process. This does not prohibit either a Complainant or Respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or similar resources. Nothing within this policy shall be construed to restrict an individual's rights to discuss the allegations, or any other matters as protected under the U.S. Constitution, including but not limited to the First Amendment, Fifth Amendment, and Fourteenth Amendment.

### Advisors

The Complainant and Respondent may each be accompanied to any related meeting (i.e., for the intake of a formal complaint, an investigation or resolution meeting, and throughout the appeal process) by the advisor of their choice, who may be, but is not required to be, an attorney. Witnesses or others involved in the grievance procedures are not permitted to bring an advisor to any meeting. Individual parties may retain counsel independently, but the Museum will not arrange or pay for an attorney-advisor to represent a Complainant or Respondent. If a party does not have their own advisor, an advisor will be appointed by the Museum to represent that party at any disciplinary hearing that takes place under this policy and procedures, in order to conduct cross-examination of the other party and witnesses. Only Title IX advisors, and never the Complainant or the Respondent, are permitted to question the other party or witnesses at any Title IX sexual harassment hearing.

Advisors may provide advice during an investigation and throughout the process. Although individual parties are not required to bring their advisor to all meetings, they are expected to maintain the same, single advisor throughout the process unless there are extenuating circumstances that require them to seek a replacement. This use of a single, consistent advisor enables the process to move forward in an efficient fashion. In the

event that a party wants to make a permanent change to their advisor, they must provide written notice in advance to the Title IX Coordinator.

During investigative meetings, the advisor may talk quietly with the individual or pass notes in a non-disruptive manner. The advisor may not intervene in an investigation meeting or address the Investigator, including by giving evidence, submitting potential questions, or making objections. While advisors may provide guidance and assistance, all written submissions must be authored and signed by the Complainant or Respondent personally.

If a matter proceeds to a hearing and a party does not have an advisor present at the live hearing, the Museum will provide an advisor of the Museum's choice to the party without fee or charge, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Once an advisor is assigned by the Museum, the party may not request a different advisor from the Museum, but may independently select another advisor. If that occurs, the advisor originally provided by the Museum will withdraw from that role. Only in the instance of a conflict of interest will the Museum substitute a Museum-provided advisor.

During a hearing, the advisor may ask relevant cross-examination questions of the other party, and any witnesses called at the hearing, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice or by a Museum-appointed advisor. The parties are never permitted to cross-examine one another or other witnesses at a hearing. Parties will be provided with an equal opportunity to present witnesses at a hearing—including expert witnesses—determined to be relevant to the allegations.

While conducting cross-examination during a hearing, the advisor may suggest that the hearing decision-maker(s) consider evidence previously obtained as part of the investigation that is directly related to the allegations, including evidence upon which the Investigator did not rely when issuing a recommendation regarding responsibility. However, advisors may not present new evidence at the hearing that was known and available, but not otherwise included in the investigation materials. While conducting cross-examination, the advisor will be expected to behave in a professional and sensitive fashion, and cannot badger, intimidate, or harass any party or witness. If, in consultation with the Title IX Coordinator and/or other relevant administrators if desired, the hearing decision-maker(s) concludes that the advisor is in fact badgering, intimidating, and/or harassing a party or witness, the hearing decision-maker(s) may remove the advisor from the hearing and prohibit him/her from further participation. For more information about hearings, see the section labeled "Hearings" below.

All Museum administrators, including the Title IX Coordinator, will communicate directly with the Complainant and Respondent, rather than with the advisor. It is the Complainant's/Respondent's responsibility to communicate with their advisor, including but not limited to information related to scheduling and process updates.

Advisors must sign an agreement to comply with the guidelines just discussed. If an advisor fails to abide by such guidelines, the individual may be prohibited from attending ongoing or future meetings. The agreement will be provided to the party and their advisor when the party requests an advisor or notifies the Museum that they have an advisor.

#### Declining to Participate

The Title IX Coordinator will make multiple efforts to engage the participation of the Complainant and/or Respondent in the process; however, either party may decline to participate in any step of this process, including the investigation and/or any subsequent appeal. Declining to schedule a meeting with investigators or refusal to respond to contact by the Title IX Coordinator may preclude or limit participation in later stages of the process, as explained below. If a hearing is required, a decision not to participate in the hearing and be cross-examined results in the hearing decision-maker(s) being prohibited from relying upon any prior statement made by that individual. That being said, the hearing decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party or witness's absence from the live hearing or refusal to answer cross-examination or other questions if participating in the live hearing.

A refusal to participate during the investigation stage of the process will preclude a Complainant or Respondent from submitting new information absent extraordinary circumstances; however, the Complainant or Respondent may submit an impact statement at the sanctioning stage, if applicable, without regard to earlier participation in the process. Even if a party declines to participate at any stage of the process, the Title IX Coordinator will continue to update each party throughout the process, unless a party submits a written request to the Title IX Coordinator to cease contact with them.

#### Retaliation

Retaliation means any adverse action or threatened action, taken or made, personally or through a third party, against a Complainant or a Respondent or any other individual because they (a) filed a complaint or made management or HR aware of a potential violation; or (b) participated in any manner in an investigation or proceeding under this policy, including individuals who file a third-

person report and those who are interviewed or otherwise provide evidence in the investigation (witnesses).

Title IX regulations further specify that:

- Intimidation, threats, coercion, or discrimination, including charges against an individual for policy violations that do not involve sex discrimination or Title IX sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Title IX sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this policy, constitutes retaliation.
- All individuals and groups of individuals, not just a Respondent or Complainant, are prohibited from engaging in retaliation.
- The exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of an investigation or other resolution process does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that a party made a materially false statement in bad faith.
- The protections against retaliation apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate. Retaliation may be found even when the underlying charge does not constitute a violation of this or other Museum policies.

### Notice

Upon receipt of a formal complaint requesting an investigation, and at various other points in the process, the Title IX Coordinator will provide notification (“notice”) in writing to both the Complainant and Respondent. Notification from the Title IX Coordinator will generally be sent via e-mail and may include notice of or notice that:

- This policy governing Title IX sexual harassment, including but not limited to the various options for resolution;
- The allegations of Title IX sexual harassment, including sufficient details known at the time and 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 Title IX sexual harassment, and the date and location of the alleged incident, if known;



- The Respondent is presumed not responsible for the alleged conduct, and that a determination regarding responsibility is made at the conclusion of the grievance procedures;
- The Complainant and Respondent can have an advisor of their choice, who may be but is not required to be, an attorney;
- The Complainant and Respondent will be permitted an opportunity to inspect and review evidence prior to a determination being made;
- It is a separate violation of policy to knowingly make false statements or knowingly submit false information during the grievance process; and
- The range of possible disciplinary sanctions and remedies following any determination of responsibility.

If in the course of an investigation the Museum decides to investigate additional allegations other than those originally provided in a notice letter, the Museum will provide subsequent notice of the additional allegations to the parties whose identities are known. The Title IX Coordinator also will update the Complainant and Respondent throughout the investigative process, including with timely notice of meetings in which either or both the Complainant and the Respondent may participate.

#### Conflicts of Interest

The Museum will ensure that the Title IX Coordinator or any individual assigned as an investigator, decision-maker(s), or any person designated by the Museum to facilitate an alternative resolution process does not have a conflict of interest or bias against Complainants or Respondents generally, or any specific Complainant or Respondent. These individuals will receive training on the definition of Title IX sexual harassment, the scope of the Museum's educational programs or activities, how to conduct an investigation and grievance process including hearings, appeals, and alternative resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Any individual participating in an alternative resolution process, investigation, or appeal is required to disclose to the Title IX Coordinator any potential or actual conflict of interest. If a Complainant or Respondent thinks that any individual involved in the process has a conflict of interest, that party may make a request to the Title IX Coordinator or the Senior Vice President of Human Resources that the individual not participate. If a conflict of interest is determined to exist, the Title IX Coordinator or Senior Vice President of Human Resources will take steps to address the conflict in order to facilitate an impartial process.

### Training

The Museum ensures that Title IX Coordinator(s), investigators, decision-makers, or any person designated by the Museum to facilitate an alternative resolution process receives training on Museum policies and procedures, the scope of the Museum's education program or activity, how to conduct an investigation, hearing, the Title IX grievance process, appeals, and alternative resolution processes, as applicable, and how to serve impartially, including by avoiding prejudging the facts at issue, conflicts of interest, and bias. Training also includes the use of any technology necessary at a hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. The Museum will also ensure that investigators receive training on issues of relevance to create an Investigative Report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an alternative resolution process will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of Title IX sexual harassment.

### Time Frames

The Museum will seek to resolve every report of Title IX sexual harassment as expediently and efficiently as possible. Many complaints may require extensive review, and time frames will vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct. Time frames may be extended for alternative resolutions and/or good cause as necessary to ensure the integrity and completeness of this process. The reasons for extension of the time frame also include, but are not limited to: compliance with a request by law enforcement; accommodation of the availability of the parties, witnesses, or advisors; and/or accounting for exam periods, school breaks or vacations. The Title IX Coordinator will notify the parties in writing of any delays.

The time frame for the Title IX grievance process begins with the filing of a formal complaint. As stated above, the grievance process will be concluded as promptly as possible, and no longer than one hundred and twenty (120) days after the filing of the formal complaint, provided that the process may be extended for alternative resolutions and/or good cause as detailed above.

### Alternative Resolutions to an Investigation

The Museum will never require a party to waive the right to a formal investigation and adjudication of formal complaints of Title IX sexual harassment. Similarly, the Museum will never require a party to participate in an alternative resolution process, and may not offer an alternative resolution process unless

a formal complaint is filed. However, at the request of either party, the Title IX Coordinator may seek to resolve certain cases of Title IX sexual harassment through an alternative resolution process involving both the Complainant and the Respondent without taking disciplinary or punitive action.<sup>5</sup>

At any time prior to a determination regarding responsibility, either party may request alternative resolution to resolve the issue. This disposition requires agreement of the Complainant and the Respondent, with the approval of the Title IX Coordinator. If the Title IX Coordinator approves such a request, the investigation will be stayed, and the Title IX Coordinator will take appropriate steps to assist in reaching a resolution. If the parties cannot reach a resolution within a reasonable time after one is proposed, the investigation will resume in accordance with the Policy. If an agreement acceptable to all parties is reached through an alternative resolution to an investigation, the matter is considered closed and the agreed upon terms will be implemented. Furthermore, once a signed alternative resolution agreement is reached between the parties and the Title IX Coordinator, the parties are precluded from pursuing an investigation and adjudication of a formal complaint arising from the same allegations.

The Museum will adhere to the following protocols when implementing an alternative resolution process:

- The Museum will obtain the voluntary, written consent of the parties to participate in an alternative resolution process;
- The Museum will provide written notice to the parties disclosing the allegations and the requirements of the alternative resolution process, including the circumstances under which the parties are precluded from resuming the investigation and adjudication of a formal complaint after the parties agreed to an alternative resolution; provided, however, that at any time prior to reaching a written resolution agreement, each party has the right to withdraw from the alternative resolution process and resume an investigation and adjudication; and
- Alternative resolution processes are not available to resolve allegations that an employee committed Title IX sexual harassment against a student.

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<sup>5</sup> Should statements made during an alternative resolution process highlight aspects of the reported conduct not previously known to the Museum, or detail additional violations of policy, the Museum reserves the right to stop that alternative resolution process and re-evaluate the available resolution options. However, such statements generally will not be used in an ensuing investigation.

Examples of alternative resolution options are provided below.

#### *Administrative Resolution*

This form of resolution can include no-contact directives mutually agreed upon by the parties, implementation of safety measures, referrals to counseling, and targeted education and training. Administrative resolution can take place when a Complainant does not want to engage in other resolution processes, and where the Museum, at its discretion and based on the available information, determines that an administrative resolution is appropriate to ensure the safety of the Museum community. The Respondent must also agree to the administrative resolution prior to implementation.

#### *Restorative Justice Conference*

A restorative justice (“RJ”) conference is a dialogue, facilitated by the Title IX Coordinator or other appropriate individual, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired. A party may request to engage in RJ at any stage of the process; however, restorative justice may not be an appropriate mechanism for all types of Title IX sexual harassment.

To qualify for RJ, the individual accused of Title IX sexual harassment must accept responsibility and express remorse for the harm that was caused. The harmed party must also be willing to accept an apology offered by the individual accused of misconduct. Additionally, all involved parties must agree to and abide by measurable and timely actions within the scope of this policy and any directives from the Title IX Coordinator. The Title IX Coordinator will review any request for restorative justice and may decline to initiate RJ based on the facts and circumstances of the particular case. The RJ Conference proceeds only if all parties agree to participate willingly. Upon doing so, the RJ process typically commences within two weeks after the Title IX Coordinator receives written agreements from all involved parties. The conference will continue until the conference is successfully concluded, or until a determination is made that the conference will not be successful. If successful, an agreeable resolution is reached by all involved parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator, as appropriate, to reevaluate other options for resolution.

The Title IX Coordinator will monitor the parties’ adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

### *Mediation*

Mediation is a forward-looking process – the parties may not agree on the facts or claims, but will be seeking to find a resolution that will allow them to move forward through mutual agreement. The Title IX Coordinator or other appropriate individual may act as the mediator. The Complainant and Respondent may each be accompanied to and assisted during the mediation sessions by an advisor of their choosing.

### Initial Assessment of Formal Complaints

The Title IX Coordinator initiates the investigative process when they receive a signed formal complaint of Title IX sexual harassment with a request to initiate an investigation, and there is adequate information to pursue an investigation, or when the Title IX Coordinator signs a formal complaint on behalf of the Museum. The Title IX Coordinator will conduct an initial assessment and may dismiss the complaint in certain circumstances:

- The Title IX Coordinator **must dismiss** the formal complaint if: (i) the conduct alleged in the complaint would not constitute Title IX sexual harassment as that term is defined above, even if proven to be true; (ii) the conduct did not occur in the Museum’s education program or activity; or (iii) the conduct did not occur against a person in the United States.<sup>6</sup>
  - However, such a dismissal does not preclude the Museum from reviewing the allegations and taking corrective action under other Museum policies, including but not limited to pursuing an investigation and resolution under the RGGGS GBM Student Policy or Anti-Harassment Policy and Procedures, or another applicable policy.
- The Title IX Coordinator **may, in their reasonable discretion and in consultation with appropriate administrators, dismiss**<sup>7</sup> the formal complaint if:
  - The 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 at or employed by the Museum; or
  - Specific circumstances prevent the Museum from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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<sup>6</sup> Upon a dismissal required under this section, the Museum will promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

If a formal complaint is dismissed as described above, any party to the allegations of sexual harassment identified in the formal complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Assuming the complaint may move forward, the Title IX Coordinator will review available options for resolution with the parties, and may also determine and facilitate appropriate interim and supportive measures, and initiate an investigation if it determines that the formal complaint would, if substantiated, constitute Title IX sexual harassment.

## **INVESTIGATION AND GRIEVANCE PROCEDURES**

The Title IX Coordinator is responsible for investigating, or coordinating the investigation of, reported violations of this Policy. During the investigation, the Complainant and the Respondent have an opportunity to make statements, suggest witnesses, and provide other evidence. The Museum will not restrict the ability of either party to discuss the allegations under investigation, or to gather and present relevant evidence. Because every case is different, the Title IX Coordinator will tailor each investigation to the specific facts of the case while maintaining for all parties a meaningful opportunity to be heard.

If an investigation is warranted, the Title IX Coordinator may investigate the formal complaint or designate an investigator from within the Department of Human Resources, or from an outside investigation firm, to investigate whether a violation of this policy occurred. The Investigator will have training in investigating and evaluating conduct prohibited under this policy, as described more fully above. The Investigator will be impartial and unbiased.

The Title IX Coordinator also will notify the parties, in writing, that an investigation will proceed. The notice will describe the allegations in the formal complaint and may include a scheduled date and time for the Complainant and the Respondent to meet separately with the Investigator. The Complainant and the Respondent must respond, confirming receipt of the notice and scheduled meeting time, if applicable, within 2 days of receiving this notice. Requests to postpone meetings and interviews may be granted, provided that the request is based on a compelling reason, and where possible, Complainants and Respondents must request a postponement at least 1 day before the scheduled meeting or interview.

The process for responding to, investigating, and resolving reports of Title IX sexual harassment will ordinarily continue during any law enforcement proceeding, if relevant. In such circumstances, the Title IX Coordinator may need to temporarily delay an investigation while law enforcement officers are gathering

evidence, generally no longer than 10 days, except when law enforcement specifically requests and justifies a longer delay. The Title IX Coordinator will resume the investigation after learning that law enforcement no longer requires a delay or has completed the evidence-gathering stage of their investigation. The Title IX Coordinator will not wait for the conclusion of any related criminal proceeding.

During any meeting or interview, the Complainant and Respondent may bring an advisor to provide advice and assistance, as described above. If the Complainant, Respondent, or an advisor is unable to be physically present for any stage of the investigative process, accommodations may be made for their participation by other means, when feasible.

### **Complainant Requests Not to Investigate**

The Title IX Coordinator will inform the Complainant before starting an investigation and seek their consent to proceed. The Complainant may request that an investigation not be undertaken. As noted above, the Museum may dismiss a formal complaint if the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein. The Title IX Coordinator, in consultation with the Office of General Counsel and other appropriate administrators, will consider such a request in light of the Museum's commitment to provide a safe and non-discriminatory environment and weigh the following factors including, without limitation:

- Circumstances that suggest there is a risk of the Respondent committing additional acts of Title IX sexual harassment, such as:
  - Whether there have been other formal complaints of Title IX sexual harassment and/or escalation of previously known conduct by the same Respondent;
  - Whether the Respondent has threatened further Title IX sexual harassment against the Complainant or others; and/or
  - Circumstances that suggest there is an increased risk of similar future acts of Title IX sexual harassment;
- Whether the alleged Title IX sexual harassment was committed by multiple perpetrators
- Whether there was use of a weapon or force in connection with the alleged Title IX sexual harassment
- Whether the Museum possesses other means to obtain relevant evidence, such as security cameras, witnesses and/or physical evidence
- If the Complainant is under 17 years old

The Title IX Coordinator will notify the Complainant in writing whether or not the Title IX Coordinator can honor the request not to investigate, including that the determination not to investigate was made at the Complainant's request, where applicable.

## INVESTIGATION PROCEDURES

The Investigator will be trained in investigating and evaluating conduct prohibited under the Policy. The Investigator will be impartial and unbiased and will objectively evaluate all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations are not based on a person's status as a Complainant, Respondent, or witness.

Each party will meet separately with the Investigator. At the initial meeting, the Investigator will discuss with each party, among other items, the nature of the allegations, the rights and responsibilities of each party, the prohibition against retaliation, and the chosen resolution process. The Complainant, the Respondent, advisors, and all witnesses will be required to agree in writing to the requirement not to engage in retaliation against any participant in the process; not to record, electronically capture or photograph any person or conversation related to this investigation process; and not to share or distribute any portion of the Investigative Report or exhibits outside of the Title IX process. Failure to comply with these directives is a violation of this Policy and may lead to disciplinary action as described herein.

The Investigator will ask each party to provide a list of witnesses and/or any relevant documents or evidence. The Investigator has the discretion to determine the relevance of any proffered evidence and to determine that certain types of evidence should be included or excluded in the investigation. The Complainant and Respondent must provide to the Investigator any relevant and available evidence they wish to be included during the investigation, as they cannot provide additional evidence at a hearing unless that evidence was unavailable until the hearing.

The following protocols apply throughout the investigative process:

- **Statements.** All parties and witnesses must be honest and act in good faith. Any person who knowingly makes a false or intentionally misleading statement in connection with the investigation may be subject to separate disciplinary action.
- **Preserving Evidence.** The Investigator will direct the Complainant, Respondent, witnesses, and other pertinent individuals to preserve any relevant evidence. Examples include, but are not limited to, electronic messages (e.g., e-mails, text messages and social media messages), writings, video surveillance, and photographs. The Investigator may review both inculpatory and exculpatory



evidence presented by either party.

- **Witnesses.** The Complainant and the Respondent have the right to identify any individuals who may be relevant witnesses to the conduct alleged, including fact and expert witnesses. The parties should be aware that it is possible for both the Respondent and the Complainant to list the same people as witnesses. Any attempt to threaten, intimidate, retaliate against, or otherwise improperly influence the testimony of a witness may result in disciplinary action. The Investigator will attempt to contact and interview any relevant witnesses identified by the parties, and any other witness the Investigator deems to have relevant information.
- **Romantic or Sexual History.** Either the Complainant or the Respondent may provide information regarding their shared romantic or sexual history. If either offers such information, the other will be notified and have the right to respond. Generally, the Investigator will not consider information concerning the romantic or sexual history of either the Complainant or the Respondent with other people, except under very limited circumstances such as explaining an injury or responding to another specific and relevant question raised by an allegation. If either party offers any of the aforementioned information, the other will be notified and have the right to respond and request that this information not be considered. The Investigator will determine whether information should be included based on relevance to the investigation, applicable law, and fairness to either or both parties.
- **Mental Health Diagnosis/Treatment.** Each party has the right to request that evidence regarding their mental health diagnosis and/or treatment be excluded from consideration when responsibility is being determined. However, if an individual wishes to present evidence of their own mental health diagnosis and treatment, they may do so in limited circumstances. If either party offers this type of information for consideration, the other party will be notified and can request that the information not be considered.
- **Prior Conduct Violations.** In investigating complaints of Title IX sexual harassment, prior reports or determinations of responsibility for such misconduct will not be considered in determinations of responsibility and therefore will not be addressed in an Investigative Report or at a hearing. However, prior determinations of responsibility for allegations of Title IX sexual harassment may be considered in the sanctioning stage of the process.
- **Credibility Assessment.** The Investigator will use the following factors when assessing the credibility of parties and the witnesses: the consistency or inconsistency of their accounts of events over time; their demeanor during interviews; their possible motivation to lie; any corroborating evidence; and whether their statements included specific details that were or were not reasonable and logical.

- **Burden of Proof.** The Investigator applies “preponderance of the evidence” as the standard of proof to determine whether a violation of the Policy occurred. Preponderance of the evidence means that the Investigator must determine, based on the evidence presented, whether the Respondent was more likely than not to have engaged in the conduct at issue. During the investigation and adjudication process, the Respondent is presumed not responsible. The Complainant and Respondent may each participate at the level to which they are comfortable. The Museum bears the burden of showing evidence to support its recommendation regarding responsibility. The burden is not on the Respondent to prove that the Respondent did not engage in Title IX sexual harassment.
- **Preclusion of privileged communications.** The Investigator cannot require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege (e.g. doctor-patient or attorney-client), unless the person holding such privilege has waived the privilege in writing and requests that the information be included.

### **Investigative Report**

Following the completion of the initial investigation, the Investigator will prepare an Investigative Report that fairly summarizes relevant evidence and interview summaries. In line with the Family Educational Rights and Privacy Act (“FERPA”), for matters involving students, the Investigator will redact names and other identifying information of students from the report and related materials, except to the extent that doing so would interfere with the purpose of Title IX to eliminate sex-based discrimination.

Prior to a hearing, the Investigator will provide a redacted and watermarked copy of the Investigative Report (including exhibits) to the Complainant, the Respondent, and their respective advisors for review, if applicable. Media exhibits such as video recordings and photographs will be available for individual review, at a prearranged time within the Museum or at another location determined by the Title IX Coordinator. The Investigator will provide the parties evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, as well as evidence upon which the Museum does not intend to rely in reaching a determination regarding responsibility, and inculpatory and exculpatory evidence, whether obtained from a party or other source. The Investigator will complete a findings and analysis section of the Investigative Report, containing the Investigator’s credibility assessments of every individual interviewed and a recommendation of responsibility for each allegation of Title IX sexual harassment. The complete Investigative Report, including the factual summaries, non-media exhibits, and the findings and analysis, will then be provided to the parties at least 10 days before any scheduled hearing.

The Complainant and Respondent will have at least 10 days to submit a written response to both the Investigative Report and evidence prior to completion of the Investigative Report, which the Investigator will consider prior to completion of the investigation.

The 10-day period is each party's opportunity to provide corrections to typos in the Investigative Report, including correction of names and/or dates, or other minor factual errors. The parties may also argue that the Investigative Report is inaccurate; identify additional witnesses to be interviewed; and ensure that all relevant information is included. This period is also the final opportunity for the Complainant and Respondent to offer evidence or information to be included as an exhibit in the Investigative Report. The Investigator will review all requests, and make the appropriate changes to the Investigative Report before finalization.

## **HEARING PROCEDURES**

The Complainant and the Respondent will receive at least 10 days advance notice of the hearing. The hearing is a closed proceeding; no one other than the hearing decision-maker(s), the Complainant, the Respondent, their respective advisors, witnesses, the Investigator, Title IX Coordinator, and other necessary Museum personnel may be present in the hearing room or rooms, or online, during the proceeding. If an individual is unable to appear in person for the hearing, accommodations may be made for the person's appearance by other means. Regardless of format, the parties and decision-maker(s) will have the ability to simultaneously see and hear the other party answering questions, as well as the hearing decision-maker(s). Requests to postpone the hearing may be granted at the discretion of the Title IX Coordinator, based on a compelling reason. Because of administrative complexity, where possible, parties should make a postponement request no less than 3 days prior to the time of the hearing.

The hearing decision-maker(s) is the individual tasked with evaluating and analyzing all relevant information in the Investigative Report, including the credibility assessment and recommendation of responsibility provided by the Investigator, as well as any relevant additional submissions and information presented by the parties in the hearing process. The hearing decision-maker(s) may consider the findings and analysis prior to reaching a determination, but the ultimate decision regarding responsibility is reached by the decision-maker(s), and the hearing decision-maker(s) is free to disagree with the recommended finding. The hearing decision-maker(s) determines whether Title IX sexual harassment occurred based on the preponderance of evidence standard (i.e. it is more likely than not that the alleged behavior occurred).

If the hearing decision-maker(s) reviews the Investigative Report and determines that additional investigation needs to be conducted, the hearing decision-maker(s) may request that the Investigator

conduct additional interviews or address any concerns. Any additional information collected by the Investigator at this stage will be provided to the hearing decision-maker(s), the Complainant, and the Respondent in the form of a post-investigation addendum to the Investigative Report.

The hearing decision-maker(s) will generally consist of a single individual, but may involve additional decision-makers, if warranted, drawn from specially trained administrators within the Museum, who will serve as the decision-maker(s) and who does not have a conflict of interest or bias. All potential hearing decision-maker(s) will receive relevant training. In addition to training on how the adjudicatory process works, the training will include but is not necessarily limited to: specific instruction on the definition of Title IX sexual harassment; the scope of the Museum's educational programs or activities; how to evaluate evidence impartially, including by avoiding prejudgment of the facts at issue; conflicts of interest and bias; and how to approach students and others about sensitive issues that may arise in the context of alleged Title IX sexual harassment.

The Complainant and Respondent will be informed who the hearing decision-maker(s) is before the hearing process begins and afforded an opportunity to raise any perceived conflicts of interest before the hearing (see Conflicts of Interest above).

The Complainant, the Respondent, their respective advisors, witnesses, and the Investigator are afforded the opportunity to participate in the hearing. Each participating individual may be placed in a separate room for the duration of the hearing and may view the proceedings via video conference. When it is an individual's turn to appear before the hearing decision-maker(s), that person will appear separately before the decision-maker(s). The Complainant and Respondent may have an advisor in the room with them at all times. If the hearing is conducted wholly or partially through video conference, an administrator will ensure that each party has the opportunity to appear before or speak directly to the hearing decision-maker(s) and appropriately participate in the cross-examination process.

*Access to evidence* - The evidence available for inspection and review must be evidence that is directly related to the allegation in the investigation, evidence upon which the Museum does not intend to rely in reaching a determination regarding responsibility, *and* inculpatory and exculpatory evidence. The Museum will make all such evidence available at any hearing, so as to give the parties an opportunity to refer to such evidence during the hearing. As with the Investigative Report and exhibits, any evidence that is referenced or used in a hearing cannot be shared or distributed outside of this process.

During the hearing, the decision-maker(s) may pose questions to better clarify or understand and analyze the Investigative Report. Additionally, in the event an individual submits a statement containing inaccurate facts or information outside the scope of the policy, those portions of the information may be redacted and/or a curative instruction may be given to the decision-maker(s). In general, hearings will proceed as follows:

- Complainant's opening statement (up to and no more than seven minutes)
- Respondent's opening statement (up to and no more than seven minutes)
- Questions by the decision-maker(s) to the Complainant (if the decision-maker(s) deems necessary)
- Questions by the decision-maker(s) to the Respondent (if the decision-maker(s) deems necessary)
- Questions by the decision-maker(s) to the Investigator (if the decision-maker(s) deems necessary)
- Cross-examination questions to the Complainant by the Respondent's Advisor
- Cross-examination questions to the Respondent by the Complainant's Advisor
- Questions by the decision-maker(s) to witnesses (if the decision-maker(s) deems necessary)
- Cross-examination questions to witnesses by the Respondent's Advisor
- Cross-examination questions to witnesses by the Complainant's Advisor
- Complainant's closing statement (up to and no more than seven minutes)
- Respondent's closing statement (up to and no more than seven minutes)

#### Cross-Examination:

If a party does not have an advisor present at the hearing, the Museum will provide that party with an advisor of the Museum's choice to conduct cross-examination on behalf of the party, and the advisor may or may not be an attorney.

Three days prior to the hearing, the parties must provide to the hearing decision-maker(s) a list of any proposed cross-examination questions based on the party and their advisor's review of the investigative report and evidence. The hearing decision-maker(s) will exclude any questions deemed to be irrelevant, and will state on the record which questions will not be permitted and the basis for exclusion. Only relevant cross-examination or other questions may be asked of a party or witness and before an answer, the hearing decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude questions as not relevant. The parties will have a reasonable time to respond to any question posed during cross-examination, and may consult with their advisor prior to providing a response.

Relevant questions include those questions that tend to prove or disprove an element of the allegation(s) being considered by the hearing decision-maker(s). 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.

Additional hearing procedures include:

- **Statement via Video Conference:** Only the person giving a statement (and that person's advisor, if applicable) is permitted to be in the hearing room with the decision-maker(s) and necessary administrator(s) during their statement. The opposing party (or both parties if a witness is being called in to answer questions by the decision-maker(s)) will have the opportunity to view and listen to statements from a separate, private room via video conference. At the request of either party, the live hearing may occur with the parties located in separate rooms with technology enabling the hearing decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- **Questioning:** The hearing decision-maker(s) may ask questions of the Complainant, Respondent, witnesses, and/or the Investigator. Questions generally will focus on statements made by the parties and the analysis of the information provided by the parties and the Investigator, including the Investigator's recommendation regarding responsibility. In addition, the Complainant and Respondent, via their respective advisors, are each permitted to ask questions of the other party or witnesses via live cross-examination, as explained more fully above.
- **Information Regarding Sexual History:** Generally, the hearing decision-maker(s) will not consider information concerning the Complainant's or the Respondent's prior sexual history, except under very limited circumstances such as explaining an injury or to prove that, on prior occasions, the Complainant provided affirmative consent to the Respondent in the same or similar manner as the incident(s) under review.
- **Prior Conduct Violations:** In cases involving allegations of Title IX sexual harassment, prior findings of responsibility for allegations of the same type of misconduct will not be considered by the hearing decision-maker(s). However, these prior findings may be admissible in determining the appropriate sanction for a particular violation of Policy.

- **Cell Phones and Recording Devices:** Cell phones and video or voice recording devices of any kind may not be used in the hearing room(s) unless approved by the hearing decision-maker(s) in advance.
- **Presumption of not responsible:** The Respondent is presumed not responsible for the alleged Title IX sexual harassment throughout the investigation and adjudication processes until a determination regarding responsibility is made by the hearing decision-maker(s) at the conclusion of the hearing.
- **Preclusion of privileged communications:** The hearing decision-maker(s) cannot require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege (e.g. doctor-patient or attorney-client), unless the person holding such privilege has waived the privilege in writing and requests that the information be included.
- **Hearing recording:** The Museum will maintain an audiovisual recording of the hearing, which will be made available to the parties for inspection and review upon request until the deadline to file an appeal has passed. Only the Museum is permitted to record any part of the hearing.
- **Accommodations:** If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Museum personnel responsible for accommodation requests to provide support to individuals disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

#### Participant Conduct During Hearings and Decorum

All participants to the hearing must conduct themselves professionally and with appropriate decorum while adhering to the hearing procedures and policy processes. The Complainant and the Respondent, respectively, may be accompanied to the hearing by an advisor of their choice. Witnesses or others involved in the hearing are not permitted to bring an advisor to the hearing, absent an approved disability accommodation.

Parties may independently retain an advisor, who may be, but is not required to be, an attorney. If a party has not previously selected an advisor to be present at a hearing, the Museum will provide an advisor of its choice, without fee or charge to that party, to conduct cross-examination on behalf of that party. The advisor may or may not be an attorney. If a party does not have their own advisor and needs one appointed by the Museum, that information must be conveyed to the Title IX Coordinator no less than 10 days before the scheduled hearing, to ensure the Museum-appointed advisor has sufficient time to review the materials.

Once an advisor is assigned by the Museum, the party may not request a different advisor from the Museum, but may independently select another advisor; if that occurs, the advisor originally provided by the Museum will withdraw from that role. Only in the instance of determination of a conflict of interest will the Museum substitute a Museum-provided advisor.

Advisors may support the party they are affiliated with and provide advice throughout the disciplinary process. During hearings, the advisor may talk quietly with a party or pass notes or communicate via computer messaging in a non-disruptive manner.

Additionally, during a hearing, the advisor may ask relevant cross-examination questions and follow-up cross-examination questions of the other party, and any witnesses called at the hearing, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice. The parties are never permitted to cross-examine one another or other witnesses at a hearing. In addition, while advisors may provide guidance and assistance throughout the process, all written submissions must be authored by the party.

While conducting cross-examination during a hearing, the advisor may suggest that the hearing decision-maker(s) consider evidence previously obtained as part of the investigation that is directly related to the allegations, including evidence upon which the Investigator did not rely when issuing a recommendation regarding responsibility. However, advisors may not present new evidence at the hearing that was known and/or available but not otherwise included in the investigation materials. While conducting cross-examination, the advisor must behave in a professional and sensitive fashion, and cannot badger, intimidate, or harass a party or witness.

Advisors are not afforded the right to object or discuss the relevance determination of any particular question with the hearing decision-maker(s). Arguments about a relevance determination during a hearing may unnecessarily protract the hearing and/or become uncomfortable for the parties; furthermore, the hearing decision-maker(s) must state the reason(s) why a particular question will not be permitted on the record during the hearing, and the Complainant and Respondent are both afforded the right to subsequently appeal based on a procedural error. Therefore, parties and advisors may not challenge the relevance determination (after receiving the decision-maker(s)'s explanation) during the hearing.

Advisors must sign an agreement to abide by these guidelines in advance of the hearing. If an advisor fails to abide by the guidelines, the advisor may be prohibited from attending future meetings or hearings. The



agreement will be provided to the party and their advisor when the party requests an advisor or notifies the Museum that they have an advisor.

### Determining Responsibility

Following the investigation and the conclusion of the hearing, the hearing decision-maker(s) will render a written determination of whether the Respondent is responsible for the alleged violation(s). The hearing decision-maker(s) will use “preponderance of the evidence” as the standard of proof to determine whether a violation of the Policy occurred. Preponderance of the evidence means that the hearing decision-maker(s) must determine whether, based on the evidence presented, the Respondent was more likely than not to have engaged in the conduct at issue.

The hearing decision-maker(s) will find a Respondent responsible or not responsible after a review of all of the appropriate and permitted statements and evidence summarized in the Investigative Report; the written statements submitted by the Complainant and the Respondent; and the statements, testimony, and evidence at the hearing. The hearing decision-maker(s) will generally render a determination within 10 days after the conclusion of a hearing, which will be delivered to the parties simultaneously, and will include the following:

1. Identification of the allegations potentially constituting Title IX sexual harassment;
2. 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;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Museum imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Museum’s education program or activity will be provided by the Museum to the Complainant; and
6. The Museum’s procedures and permissible basis for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the Museum provides the parties with the written determination of the result of the appeal, if an appeal is filed, or on the date on which an appeal would no longer be considered timely if an appeal is not filed. The Title IX Coordinator is responsible for effective implementation of any remedies.

If the hearing decision-maker(s) finds the Respondent responsible for one or more violations of this Policy, the hearing decision-maker(s) will meet with the Dean of RGGGS, the Senior Vice President overseeing the MAT Program, or the Senior Leader overseeing the Respondent's area (as applicable) to determine appropriate disciplinary sanction(s) after considering the relevant factors, which include the severity of the violation, in cases of sexual assault, the circumstances surrounding the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.), the Respondent's state of mind (intentional, knowing, reckless, negligent, etc.), the Respondent's history of misconduct, including but not limited to prior findings of Title IX sexual harassment, the ongoing impact on the Museum community, and any ongoing threat to the Museum community.

### **Impact Statement**

Complainants and Respondents can submit impact statements to the Title IX Coordinator while the hearing decision-maker(s) and applicable administrator(s) consider any appropriate sanctions. The purpose of an impact statement is to discuss how the alleged Title IX sexual harassment and the disciplinary process impacted the individual, and must be prepared by the party and be no more than 3 single-spaced typed pages, using 12-point Times New Roman font and one-inch margins. Any impact statement must be submitted to the Title IX Coordinator within 3 days following conclusion of the hearing.

### **How Sanctions Are Determined**

In determining a sanction, the hearing decision-maker(s) with either the Dean of RGGGS, the Senior Vice President overseeing the MAT Program, or the Senior Leader overseeing the Respondent's area (as applicable), or their designee, will impose sanctions that are:

- Fair and appropriate, given the facts of the particular case;
- Consistent with the Museum's handling of similar cases;
- Adequate to protect the safety of the Museum community; and
- Reflective of the seriousness of the Title IX sexual harassment.

In determining an appropriate sanction, the hearing decision-maker(s) will take into account the following considerations:

- The specific Title IX sexual harassment at issue (such as penetration, touching under clothing, touching over clothing, etc.);
- The circumstances accompanying the lack of consent (such as force, threat, coercion, intentional incapacitation, etc.);
- The Respondent's state of mind (intentional, knowing, bias-motivated, reckless, negligent, etc.);

- The impact of the offense on the Complainant;
- The Respondent's prior disciplinary history;
- The safety of the Museum community;
- The Respondent's candor in responding to the complaint; and
- Any other mitigating or aggravating circumstances in order to reach a just and appropriate resolution in each case.

The hearing decision-maker(s) will also identify permanent remedies that seek to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being, and protect the Complainant's educational and employment opportunities. Such remedies should restore to the Complainant, to the extent possible, all benefits and opportunities lost as a result of the prohibited conduct. Permanent remedies may include extending or making permanent any interim measures.

Possible sanctions include but are not limited to one or more of the following, as applicable:

- Reprimand/warning;
- Required training or recommended counseling;
- Changing the Respondent's work or academic schedule and responsibilities;
- Disciplinary probation;
- Revocation of honors or awards;
- Restricting access to Museum facilities, resources or activities;
- Removal from leadership/supervisory positions within the Museum community;
- Issuing a "no contact" order to the Respondent or requiring that such an order remain in place;
- Movement of the Respondent's workplace/station;
- Demotion;
- Expulsion;
- Revocation of RGGGS degree;
- Termination or suspension of program registration, financial support, or academic or professional appointment; and/or
- Termination or suspension from the Museum or RGGGS

In addition to any other sanction (except where the sanction is expulsion or revocation of a degree for student Respondents or termination of employment for employee Respondents), a Respondent determined to be responsible for a violation of the Policy may be required to receive appropriate education and/or training

related to the Title IX sexual harassment violation(s) at issue. Counseling or other support services for the Respondent may be recommended.

When a Respondent is found responsible, and the sanction includes suspension or expulsion from their job or academic duties, the individual may be either severely restricted in their movements on the Museum premises or barred completely from the premises during the entirety of the appeal-filing period and appeal process. If a Respondent is eligible for return to the Museum while a Complainant is still enrolled at RGGGS or employed by the Museum, the Complainant will be notified in writing, at the earliest possible date, of the Respondent's eligibility to return.

In addition, with regard to student Respondents, pending an investigation, a determination and/or appeal, an "administrative hold" may be placed on a student Respondent's RGGGS transcript, diploma, registration, fellowship or other payments, student account and/or any other academic program elements until the grievance procedures are resolved. Upon conclusion of the appeal, if any, a permanent transcript notation will be indicated on the record for Title IX sexual harassment cases resulting in suspension or expulsion. If a student is found responsible through this process for crime(s) of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act (the "Clery Act"), the Dean of RGGGS or the Senior Vice President overseeing the MAT Program will direct that a notation be placed on the student's transcript as follows:

- Where the sanction is a suspension, the following notation will be listed: "SUSPENDED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION."
- Where the sanction is expulsion, the following notation will be listed: "EXPELLED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION."

If a student Respondent withdraws from their academic program while such charges are pending for allegations related to sexual violence as defined in the Clery Act, and the student declines to complete the grievance process, the Dean of RGGGS or Senior Vice President overseeing the MAT Program will direct that the following notation be placed on the student's transcript: "WITHDREW WITH CODE OF CONDUCT CHARGES PENDING."

- Those students who withdraw from RGGGS and from the grievance process forfeit any right to resume participation in the proceedings at any point in the future.
- Conduct charges are considered "pending" once a student is informed in writing that there are allegations that the student may have violated the policy.

A student may file an appeal to seek removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to 1 year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

## **APPEALS**

Respondents and Complainants may appeal the hearing decision-maker(s)'s determination and sanction (if applicable), or the Museum's dismissal of a formal complaint or any allegations. To file an appeal, the appealing party must submit a written appeal to the Title IX Coordinator within 5 days after the finding and sanctioning notice or notice of dismissal, respectively. Appeals are decided by an Appeal Panel majority vote.

Appeals will be addressed as follows, based on the identity of the Respondent.

If the Respondent is a tenured curator/RGGS Computational Biology faculty member and the sanction is termination, the appeal shall be subject to the termination procedures set forth in the Policy to Govern the Conditions of Employment, Service and Responsibilities of the Scientific Staff. If the appeal is by an individual subject to a collective bargaining agreement, it shall be addressed as provided in that contract. For all others, the appeal process is specified below.

To request an appeal based on one of the permissible grounds listed below, the appealing party must submit to the Title IX Coordinator a letter stating the grounds for the appeal in reasonable detail and how those grounds materially affected the outcome, and provide supporting information including all materials that the party requesting review wishes to have considered. If it is determined that the request states one of the allowable grounds for review, the Title IX Coordinator will provide a copy of the request for appeal to the other party and invite the other party to submit, within 7 days, a statement and supporting materials in response to the submission of the party requesting review.

The Appeal Panel will receive relevant training on how the adjudicatory and appeal process works, the definition of Title IX sexual harassment, the scope of the Museum's education program or activity, how to conduct an appeal, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and the sensitive issues in reviewing Title IX sexual harassment cases.

Failure to meet the deadline for appeal shall result in waiver of the right to appeal.

### *Composition of Appeal Panel & Appeal Procedure*

When the Respondent is a student, the Title IX Coordinator will form an Appeal Panel including the Dean of RGGGS, the Senior Vice President overseeing the MAT Program, and the Museum Ethics Officer. When the Respondent is not a student, the Title IX Coordinator will convene an Appeal Panel composed of the three individuals selected from among the directors of the Museum or other appropriate Museum administrators who are not directly or indirectly reporting into the Senior VP who made the previous determination.

The Appeal Panel will generally render a written decision within fifteen (15) days of the last written submission by either of the parties, depending on the availability of the Appeal Panel at the time of the appeal. The parties will be notified if there is any delay in providing an appeal decision. The Appeal Panel may affirm the findings and/or sanction, revise the sanction, or remand (return) the matter for further consideration by the Title IX Coordinator or hearing decision-maker(s), as applicable. If the matter is remanded to the Title IX Coordinator or hearing decision-maker(s), the Appeal Panel will provide corrective suggestions with the remand/referral. The Appeal Panel's decision will be in writing and, except in the case of a remand/referral, is final.

Any discipline imposed prior to the filing of the appeal will stand while the appeal is pending. Discipline may also be imposed while the appeal is pending. Discipline may be reduced or increased by the Appeal Panel. A Respondent (other than tenured/curator RGGGS Computational Biology faculty members) found responsible for violation of this Policy, and for whom the sanction of suspension or dismissal from RGGGS or suspension or termination of employment at the Museum has been imposed, may be required to leave RGGGS or the Museum during the time the appeal is pending. This decision will be made by the Dean of the RGGGS or the Senior Vice President overseeing the MAT Program, as applicable, in the case of a student Respondent, and by the Title IX Coordinator, in consultation with Human Resources or other appropriate administrators as applicable, in the case of an employee Respondent.

Appeal of decisions after remand may be requested by either party under the above procedure.

The three grounds for appeal are:

- Procedural error: An appeal based on procedural error must identify with specificity each alleged error within the investigative and/or hearing process and the ways in which the specified error(s) substantially affected the decision and/or sanction of the hearing decision-maker(s), or the

Museum's dismissal of a formal complaint or any allegations therein, to the detriment of the appealing party. Disagreement with the finding or sanction is not, by itself, a ground for appeal;

- New information: An appeal based on new information must explain why this information was not reasonably available or not provided to the Investigator or hearing decision-maker(s) in a timely manner, and how this information would have substantially altered the decision by the hearing decision-maker(s) or the Title IX Coordinator's dismissal of a formal complaint or any allegations therein. If a party declined to participate or withdrew from the process, the Appeal Panel will not consider information that the party could have provided if they had fully participated in the process. This includes situations where a party declines to participate on the advice of their advisor or due to a concurrent criminal investigation; and/or
- Conflict of Interest/Bias: An appeal based on conflict of interest or bias must explain how 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. An appeal on this basis must also explain why the conflict of interest was not disclosed during the grievance procedures.

The party requesting an appeal may, in addition to their written request to appeal, provide a written submission for the Appeal Panel to review. The written statement must be prepared by the party and be no longer than five single-spaced typed pages, using 12-point Times New Roman font and one-inch margins. No attachments or exhibits will be accepted; references to evidence should be made to materials included in the Investigative Report or formal complaint.

If either the Complainant or the Respondent submits an appeal, the Museum will notify the other party within a reasonable time. The Museum will provide the non-appealing party with an opportunity to review the appeal and submit a written response. This response must be written by the party and no more than 5 single-spaced typed pages, using 12-point Times New Roman font and one-inch margins, and submitted within 7 days after a notice of appeal is issued. If both the Complainant and the Respondent appeal, the appeals will be considered concurrently, and each party will have the opportunity to review and respond to the other party's appeal.

The purpose of an appeal is not to initiate a review of substantive issues of fact, or for a new determination of whether a violation of the Policy has occurred. The Appeal Panel is strictly limited to determining if an appeal should be granted based on the above grounds for appeal. In making a determination, the Appeal Panel will have access to and the ability to review all applicable documents, including the formal complaint,

complete Investigative Report, all exhibits, written submissions submitted by the parties, impact statements, and a recording of the hearing (if applicable). The Appeal Panel may also request additional information from the Title IX Coordinator, the Investigator (if different than the Title IX Coordinator), and/or the hearing decision-maker(s) regarding issues of procedural error, new evidence, or sanctioning precedent, as applicable. Additionally, in the event a party submits an appeal containing inaccurate facts or information outside the scope of the policy, those portions of the information may be redacted and/or the Title IX Coordinator may provide a curative instruction to the Appeal Panel.

## **RECORDKEEPING**

The Museum will maintain, for a period of at least 7 years, records of:

- Each Title IX sexual harassment investigation, including any determination regarding responsibility and any audiovisual recording or transcript of a hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore equal access to the Museum's education program or activity;
- Any appeal, and the result therefrom;
- Any alternative resolution and the result therefrom; and
- All materials used to train the Title IX Coordinator, investigators, decision-maker(s), and any person who facilitates an alternative resolution process.
- For each report received, whether a formal complaint is filed or not, the Museum will create and maintain for a period of 7 years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each case, the Museum will document the basis for its conclusion to take a particular action, and document that it has taken measures designed to restore or preserve equal access to the Museum's education program or activity. If the Museum does not provide a particular Complainant with supportive measures, the Museum must document the reason(s) why such a response was not clearly unreasonable in light of the known circumstances.

### Records Disclosure

Disciplinary proceedings with regard to a student are subject to the Family Educational Records and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits the disclosure of student information outside the Museum without the student's consent, but it does provide for release of student disciplinary information without a student's consent in certain circumstances.



Any information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel or subsequent investigation into the same conduct, or required to be produced through other compulsory legal processes.

Additional information about FERPA can be found in the RGGS and MAT Handbooks for Students and Faculty on Academic and Conduct Policies and Procedures.

## **Amendments**

This Policy and/or the Grievance Procedures may be amended from time to time. Nothing in the Policy or Procedures shall affect the inherent authority of the Museum to take such actions as it deems appropriate to further the educational mission or to protect the safety and security of the Museum community.