

**SEX DISCRIMINATION AND SEXUAL HARASSMENT POLICY**

**I. Purpose and Statement of Policy**

**A. Scope and applicability**

Hoban strives to provide an academic and working environment that is free from discrimination on the basis of sex. This Policy outlines the policies and procedures that Hoban will use to address reports of conduct that constitute sexual harassment. Hoban does not discriminate in its education program or activities, which include admission to and employment with Hoban.

Hoban has also adopted a grievance procedure as described herein to provide the prompt and equitable resolution of student and employee complaints of sexual harassment. This procedure also describes how members of Hoban's community can report or file a complaint of sexual harassment and outlines how Hoban will respond to these reports and formal complaints.

Hoban has adopted other grievance processes and procedures that provide for the prompt and equitable resolution of student or employee complaints alleging actions that do not involve complaints of sexual harassment. For students, the grievance process and procedures for complaints that do not involve sexual harassment are included in the "Harassment, Bullying and Hazing" section of the Parent and Student Handbook. For employees, the grievance processes and procedures for complaints that do not involve sexual harassment are included in the "Employment Law" section of the Employee Handbook. Both Handbooks are available on Hoban's website.

Hoban has designated the following employee to coordinate its efforts to comply with this policy. This individual is called the Grievance Officer. The Grievance Officer's contact information is below:

Mrs. Jennifer Kresja  
Human Resources Officer  
(330) 773-658  
kresjaj@hoban.org  
1 Holy Cross Boulevard  
Akron, OH 44306

The Grievance Officer may appoint Deputy Grievance Officers in his/her discretion.

Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person who has been subject to the conduct that constitutes sex discrimination or sexual harassment. This could be done in person, by mail, by telephone, or by electronic mail using the contact information listed above for the Grievance Officer.

Such a report can be made at any time (including during non-business hours) by using the telephone number, email address, or by sending mail to the office address listed above.

Please note that a report of sexual harassment does not automatically result in a formal investigation as defined in this policy. The Grievance Officer will work to provide supportive measures, access to resources, information about formal and informal resolution procedures, and information about filing a report with the appropriate law enforcement agency.

## **B. Jurisdiction**

Under this Policy, Hoban has jurisdiction to address allegations of sexual harassment that occur within Hoban's educational programs or activities. This includes conduct that occurs on campus, at Hoban events, regardless of where they occur, and academic, co-curricular and extra-curricular programs that occur off-campus, including those that occur outside the United States.

## **II. Definitions**

For purposes of this policy, the following definitions are applicable:

***Actual knowledge:*** Actual Knowledge is notice of sexual harassment or allegations of sexual harassment to Hoban's Grievance Officer or any other Hoban employee except for the respondent.

***Complainant:*** A Complainant is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

***Day:*** A day is defined as a business day.

***Formal complaint:*** Formal complaint is defined as a document filed by a complainant or signed by the Grievance Officer alleging sexual harassment against a respondent and requesting that Hoban 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 Hoban's education program or activity of Hoban with which the formal complaint is filed. A formal complaint may be filed with the Grievance Officer in person, by mail, or by electronic mail, by using the contact information required to be listed for the Grievance Officer or any additional method designated by Hoban. Additionally, a "document filed by a complainant" can be in the form of an electronic submission (such as by electronic mail or through an online portal provided for this purpose by Hoban) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. In situations where the Grievance Officer initiates or signs a formal complaint, the Grievance Officer is not a complainant and must comply with the guidelines outlined in this section.

**Respondent:** A Respondent is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Grievance Officer:** The Grievance Officer is the employee, or employees, designated to coordinate Hoban's efforts to comply with this Policy. The Grievance Officer, in his/her discretion, may designate other individuals, regardless of whether such individuals are Hoban employees or neutral third-parties, to perform the duties of investigator(s), decision-maker(s), appeal officer(s) and person(s) who facilitate informal resolutions under this Policy.

**Consent:** Consent refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct as issue. A person may be incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. A person who is incapacitated is not capable of giving consent.

**Coercion** is the use of unreasonable and persistent pressure to the point that it overrides the voluntary nature of the act. Examples include threatening to harm oneself if the other person does not engage in sexual activity, or threatening to disclose another individual's private information if the other person does not engage in sexual activity.

**Incapacitation** refers to the state where a person does not understand and/or appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition, disability, or due to a state of unconsciousness or sleep.

### **III. Privacy and Confidentiality**

Privacy and confidentiality have separate and distinct meanings under this Policy:

#### **A. Privacy**

Hoban strives to respect the privacy of both parties and other participants in the investigation process. Privacy generally means that information related to the report and investigation of alleged violations of this Policy will only be shared with a limited selection of individuals whose knowledge is necessary to respond to claims of such violations. Such response includes the reviewing of reports, investigating claims, participating in investigations, conducting hearings, reviewing appeals, and other related issues. Student education records are protected in compliance with the Family Educational Rights and Privacy Act (FERPA).

Hoban must obtain written consent from a party before Hoban may receive any health or other treatment records. If a party provides written consent for medical or other treatment records to become part of an investigation's case file, both parties must be able to review and comment on those records if the investigation moves towards an investigative report and decision.

## **B. Confidentiality**

Hoban will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statutes or regulations, as required by law, or to carry out the purposes of this Policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Confidentiality applies to certain types of information that cannot be revealed or distributed to other persons without express permission of the individual to whom the information pertains, or as otherwise permitted or required by law. Certain Hoban and community professionals, such as health care and mental health professionals, maintain confidential relationships in their professional capacities with patients and clients under the privilege created by Ohio law.

Limits to confidentiality include:

### **1. Mandatory Reporting of Child Abuse**

All Hoban employees and officials are mandatory reporters of child abuse and neglect unless otherwise excepted by law. Where an allegation of sex discrimination or sexual harassment also may constitute child abuse or neglect, employees are required to report such abuse or neglect to Children Services and/or Law Enforcement, as is required by law. The Grievance Officer should be informed that such a report has been made when an allegation of sex discrimination or sexual harassment is involved.

### **2. Ohio Felony Reporting Requirement**

Under Ohio law, all individuals, excluding confidential resources, must report felonies, including sexual violence. Under Ohio Revised Code Section 2921.22, medical professionals, mental health professionals and clergy are not required to report felonies. This legal requirement means that the Grievance Officer must report any felony to law enforcement officials. To the extent reasonably possible, Hoban will communicate with the Complainant or Reporting Person in advance of any report to law enforcement. The Complainant has the choice of whether and how to participate in any subsequent criminal investigation.

### **3. Ohio Medical Professional Reporting Requirements**

In Ohio, medical professionals have distinct legally mandated reporting responsibilities. Where a medical professional knows or has reasonable cause to believe that serious physical harm resulted from an offense of violence, the medical professional is required to make a report to law enforcement. Medical professionals must deem a patient medically stable

before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name - only the date, general time, and general location of the incident.

#### **4. Risk of Harm to Self or Others**

Mental health professionals are required to disclose information where there is an imminent threat of harm to self (the client) or others.

### **IV. Making a Formal Report of Sexual Harassment**

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

A complainant may file a formal complaint by either using a Hoban-provided electronic submission system, or by physically or digitally signing a document and filing it as authorized in person, by mail, or by e-mail.

There is no time limit or statute of limitations on a complainant's decision to file a formal complaint.

When the Grievance Officer believes that with or without the complainant's desire to participate in a grievance process, the allegations require an investigation, the Grievance Officer has the discretion to initiate a grievance process. In deciding whether to initiate the grievance process without a complainant's desire to file a formal complaint, the Grievance Officer will consider:

- Whether there is a pattern of alleged misconduct by a particular respondent; and
- Whether a complainant's allegations involved violence, use of weapons, or similar factors; and
- The impact of the alleged conduct on the Hoban community, among other factors.

While reporting of all harassment by everyone is encouraged, third parties other than the Grievance Officer are not permitted to file formal complaints.

In situations where the Grievance Officer initiates or signs a formal complaint, the Grievance Officer is not a complainant and such an action is not an indication of bias on the Grievance Officer's part. When a formal complaint is signed by the Grievance Officer, all parties must receive notice with details of the allegations and the identities of the parties, if known.

To the extent possible, Hoban will investigate a complainant's formal complaint, even if the respondent's identity is unknown, as the investigation may reveal the respondent's identity.

### **V. Violations of this Policy**

**A. Sexual Harassment<sup>1</sup>**

“Sexual harassment” for purposes of this Policy means conduct on the basis of sex that satisfies the definition of one or more of the following:

- (1) An employee of Hoban conditioning the provision of an aid, benefit, or service of Hoban on an individual’s participation in unwelcome sexual conduct (employee-to-student quid pro quo);
- (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 Hoban’s education program or activity (hostile environment sexual harassment); or
- (3) Sexual assault<sup>2</sup>, dating violence<sup>3</sup>, domestic violence<sup>4</sup>, or stalking.<sup>5</sup>

**1. Sexual Assault**

The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The term includes rape, sodomy, sexual assault with an object, fondling, incest and statutory rape.

**2. Dating Violence (Clery/VAWA (34 CFR 668.45))**

“Dating Violence” means an act of violence committed by a person who is or has been in a romantic or intimate relationship with the complainant. The existence of such a romantic or intimate relationship is determined by the length of the relationship, the type of relationship, and the frequency of interactions between the individuals involved in the relationship.

Acts of violence may include, but are not limited to:

- Recklessly causing bodily injury;
- Attempts to cause bodily injury; and
- Causing fear of immediate, physical harm through threat of force.

**3. Domestic Violence**

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of

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<sup>1</sup> Note that the definitions in this section are different under a Title VII analysis.

<sup>2</sup> As defined in 20 U.S.C. 1092(f)(6)(A)(v).

<sup>3</sup> As defined in 34 U.S.C. 12291(a)(10).

<sup>4</sup> As defined in 34 U.S.C. 12291(a)(8).

<sup>5</sup> As defined in 34 U.S.C. 12291(a)(30).

the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Acts of violence may include, but are not limited to:

- Recklessly causing bodily injury;
- Attempts to cause bodily injury; and
- Causing fear of immediate, physical harm through threat of force.

#### **4. Stalking**

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

#### **B. Retaliation**

Neither Hoban nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this Policy, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sexual harassment and adopted by Hoban and set forth in this Policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under the regulations does not constitute retaliation, as described above, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this provision.

#### **VI. Supportive Measures**

“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 Hoban’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Hoban’s educational environment, or deter sexual harassment.

Supportive measures at Hoban may include but are not limited to: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures.

Hoban 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 Hoban to provide the supportive measures. The Grievance Officer is responsible for coordinating the effective implementation of supportive measures.

Hoban offers supportive measures to both complainants and respondents. Upon receipt of a report of an identifiable complainant, the Grievance Officer will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the complainant the process for filing a formal complaint. If the Grievance Officer does not offer supportive measures to the complainant, the Grievance Officer must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Upon noticing a respondent of a report raising potential sexual harassment violations against the respondent, the Grievance Officer will discuss with the respondent the availability of counseling and may discuss the availability of other supportive measures discussed above, where the Grievance Officer deems appropriate.

Throughout any informal process, formal process, and/or appeals process, the Grievance Officer will continually reassess and discuss appropriate supportive measures with the parties to ensure they remain effective.

The Grievance Officer will document all discussions and offers of supportive measures to all parties, as well as whether the parties accepted or declined any offers. If a party declines an offer of supportive measures, the Grievance Officer will document the party’s stated reason for declining the offer.

## **VII. Investigation Process for Formal Complaints**

### **A. Grounds for Dismissal of Formal Complaint**



If upon review of the formal complaint Hoban determines that it does not have jurisdiction to pursue the complaint, it will dismiss the complaint from investigation under this Policy. Hoban may also dismiss a formal complaint under this Policy or allegations therein if:

- A complainant notifies the Grievance Officer in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by Hoban, or;
- Specific circumstances prevent Hoban from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Such a dismissal does not preclude Hoban from proceeding under another Hoban conduct process.

Hoban will send written notice of the dismissal and the reasons for dismissal simultaneously to all parties.

## **B. Equitable Treatment**

Complainants and respondents are eligible for Supportive Measures as defined within this Policy. Hoban will not impose disciplinary sanctions against a respondent pursuant to the Policy unless a determination of responsibility for sexual harassment has been made against the respondent.

Hoban will conduct an objective evaluation of all relevant evidence – including both evidence indicating that the respondent is responsible for the alleged policy violation (“inculpatory evidence”) and evidence indicating that the respondent is not responsible for the alleged policy violation (“exculpatory evidence”). Hoban will not require, allow, rely upon, evaluate, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected by a legally recognized privilege (e.g., attorney client), unless the person holding such privilege has waived the privilege.

## **C. Bias and Conflicts of Interest**

Any individual designated by Hoban as a Grievance Officer, investigator, decision-maker, or any person designated by Hoban to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The following will not be considered evidence of bias:

- The Grievance Officer’s initiation of a formal complaint, or;
- An individual’s decision that allegations warrant an investigation.

Hoban will apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving as a Grievance Officer, investigator, decision-maker, or any other role under this Policy is biased, and will

exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual's current job title, professional qualifications, past experience, identity, or sex will not alone indicate bias.

**D. Presumption of Not Responsible**

There is a presumption that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

**E. Timeframe**

Hoban will attempt to complete most investigations within 60 days. The timeframe for formal investigations will begin upon filing of a formal complaint and will conclude upon submittal for adjudication. Investigations may be delayed and any timeframes contained in this Policy may be extended for good cause and with written notice provided by Hoban to complainants and respondents including the reason for the delay or extension. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Delays caused solely by administrative needs are not considered good cause. Hoban will attempt to accommodate the schedules of parties and witnesses, however, grievance resolution must be completed in a reasonably prompt timeframe, and must proceed to conclusion even in the absence of a party or witness.

**F. Sanctions and Remedies**

If it is determined that a respondent violated the Policy, Hoban will institute sanctions reasonably calculated to stop the conduct, prevent its recurrence and remedy its effects. Sanctions for respondents may include anything from a warning, up to and including disciplinary expulsion or termination. Hoban will also provide remedies to complainants found to have been subjected to conduct which violates the Policy. Remedies could include counseling, academic accommodations, academic support, and employment accommodations.

**G. Evidence**

The standard of evidence under this policy for review of formal complaints against students and employees is preponderance of the evidence. The standard of evidence reflects the "degree of confidence" that a decision-maker has in the correctness of the factual conclusions reached. Under the preponderance of the evidence standard, the decision-maker determines that a conclusion is based on facts that are more likely true than not. Where the decision-maker determines that the evidence in a case is "equal" or "level" or "in equipoise," the preponderance of the evidence standard has not been met and results in a finding that the respondent is not responsible.

Hoban will apply the same standard of evidence for formal complaints against students as for formal complaints against employees, and apply the same standard of evidence to all formal complaints of sexual harassment.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Hoban and not on the parties.

Hoban will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Hoban obtains that party's voluntary, written consent.

Hoban will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Hoban will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. A party's communication with a witness or potential witness is considered part of a party's right to meaningfully participate in furthering the party's interests in the case, and not an "interference" with the investigation. However, where a party's conduct toward a witness might constitute "tampering" (for instance, by attempting to alter or prevent a witness's testimony), such conduct also is prohibited as retaliation.

The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which Hoban does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Hoban will not consider or provide for inspection and review evidence which Hoban knows was illegally or unlawfully created or obtained. Hoban may impose on the parties and party advisors restrictions not to disseminate any of the evidence subject to inspection and review.

Prior to completion of the investigative report, Hoban will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

## **H. Emergency Removal**

If, after receipt of a complaint and an individualized safety and risk assessment, Hoban determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of a respondent, Hoban may remove the respondent on an emergency basis. A removed respondent will receive notice and an opportunity to challenge the decision immediately following the removal. Any emergency removal under this paragraph must also comply with

504 of the Rehabilitation Act, as applicable, and is not considered discipline for purposes of this policy. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate. Non-student employees may be placed on administrative leave during the grievance process.

**I. Notice**

Hoban will provide to all known parties written notice of:

- Hoban's grievance process;
- Allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Hoban's position that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- The parties' right to have an advisor of their choice, who may be an attorney;
- The parties' right to inspect and review evidence;
- Hoban's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process;
- The date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate, and;
- Additional allegations not included in the original notice.

**J. Consolidation of Formal Complaints**

Hoban may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The same facts and circumstances means that the multiple complainants' allegations are so intertwined that their allegations directly relate to all parties.

**K. Advisors**

Parties will have equal opportunities to have others present during the grievance proceeding, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, an attorney. Hoban will not limit the choice or presence of an advisor for complainant or respondent in any meeting or grievance proceeding. Advisors are required to abide by Hoban restrictions regarding the extent to which they may participate in proceedings, and any restrictions will apply equally to both parties. If a party's advisor refuses to comply with restrictions set by Hoban, it may require the party to use a different advisor.

**L. Investigative Report**

Hoban will prepare an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. This 10-day period for the parties to provide written responses runs concurrently with the 5-day period in Article VIII (A) below for parties to provide any questions to the decision-maker. The report will not include a summary of evidence not considered to be relevant. If a party disagrees with an investigator's determination about relevance, the party may argue relevance in their written response and/or to the decision-maker during adjudication of the complaint.

If the report involves multiple complainants, multiple respondents, or both, Hoban may issue a single investigative report.

### **VIII. The Written Determination**

#### **A. Introduction**

Upon the conclusion of the investigation, the grievance procedure will move into the adjudication phase. The Grievance Officer will appoint a person to serve as decision-maker for the complaint. The decision-maker may also be the Grievance Officer or the investigator, at Hoban's discretion. The decision-maker is under an obligation to objectively evaluate all relevant evidence both inculpatory and exculpatory, and must therefore independently reach a determination regarding responsibility without giving deference to the investigative report. The decision-maker has the right and responsibility to ask questions and elicit information from parties and witnesses on the decision-maker's own initiative to aid the decision-maker in obtaining relevant evidence both inculpatory and exculpatory, and the parties also have equal rights to present evidence to the decision-maker so the decision-maker has the benefit of perceiving each party's unique perspectives about the evidence.

After Hoban sends the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker will afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness. The parties will provide any questions to the decision-maker within 5 days of issuance of the investigative report. This 5 day period runs concurrently with the 10 day period in Article VII (L) for the parties to provide written responses to the investigative report. After the close of the period to submit questions, the decision-maker will forward relevant questions to each party/witness. Each party/witness will have five (5) days to provide the decision-maker with answers, which the decision-maker will share with the parties. The decision maker will allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless 1) it is offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or 2) it concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent. The decision-maker will explain to the party proposing the questions any decision to exclude a question as not relevant.

## **B. Relevance**

During the adjudication process only relevant questions may be asked of a party or witness.

The following may be considered irrelevant:

- Repetition of the same question;
- Evidence that is duplicative of other evidence;
- Information protected by a legally recognized privilege;
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, 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;
  - 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;
- Any party's medical, psychological, and similar records, unless the party has given voluntary, written consent, and;

Hoban will not exclude relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence, however, the decision-maker may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

## **C. Determination Regarding Responsibility**

The decision-maker will issue a written determination of responsibility. The determination of responsibility will include:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Hoban imposes on the respondent (subject to requirements of state law and any applicable collective bargaining agreement whereby the decision-maker will make a recommendation of discipline to be determined by the appropriate administrators), and whether remedies will be provided by Hoban to the complainant, and;

- Hoban's procedures and permissible bases for the complainant and respondent to appeal.

The determination will lay out the evidentiary basis for conclusions reached in the case. While the determination will indicate whether remedies will be provided, the nature of such remedies will not be included within the determination. The determination will be provided to the parties simultaneously. The determination becomes final only after the time period for appeal has expired or, if a party does file an appeal, after the appeal decision has been sent to the parties.

#### **D. Weighing Credibility**

The decision-maker will evaluate all relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker. Credibility determinations may be based on factors such as recall of specific details, inherent plausibility, internal consistency, and corroborative evidence. Corroborating evidence is not required.

#### **E. Remedies**

Where a determination of responsibility for sexual harassment is made, Hoban will provide remedies to a complainant designed to restore or preserve equal access to Hoban's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. The Grievance Officer is responsible for effective implementation of remedies. Where the final determination has indicated that remedies will be provided, the complainant can then communicate separately with the Grievance Officer or their designee to discuss what remedies are appropriately designed to preserve or restore the complainant's equal access to education. Remedies for a complainant which do not affect the respondent must not be disclosed to the respondent. Persons found to be responsible for violations of this Policy are subject to discipline, up to and including expulsion and/or termination of employment with Hoban.

### **IX. Appeals**

Complainants and respondents may appeal the decision-maker's determination regarding responsibility, or Hoban's dismissal of a formal complaint or any allegations therein by filing a notice of appeal with the Grievance Officer, including the grounds supporting the appeal, within five (5) days of issuance of the determination. Hoban will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The parties must file their written statement with Hoban within five (5) days of receipt of the notice of appeal. The appeal officer will issue a written decision describing the result of the appeal and the rationale for the result within

ten (10) days of the due date for the written statements of the parties and provide the written decision simultaneously to both parties.

The grounds for appeal are:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter, and;
- The Grievance Officer, 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.

All grounds for appeal will be available to all parties.

The appeal officer will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Grievance Officer.

## **X. Informal Resolution**

Hoban does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under this Policy. Similarly, Hoban does not require the parties in a sexual harassment allegation to participate in an informal resolution process, as described below.

After the initiation of a formal complaint of sexual harassment, if all parties voluntarily consent in writing, Hoban will assist the parties in an informal resolution process. An informal resolution process is available at any time prior to reaching a determination regarding responsibility in the grievance process, except in the cases of reports of sexual harassment of a student by a Hoban employee.

Before initiating an informal process, Hoban will: (1) provide the parties a written notice; and (2) obtain the parties' voluntary, written consent to the informal resolution process. The written notice that Hoban will provide to the parties will disclose the allegations, the requirements of the informal resolution process (described below), and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. Hoban's informal process provides that, at any time prior to agreeing to a resolution, any party has a right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Upon initiation of the informal process, the Grievance Officer will designate an individual who will attempt to mediate the dispute through meetings with the parties. Although face-



to-face mediation or a restorative justice conference may be suggested, parties will never be required to meet directly with one another as part of the informal resolution process.

When sexual harassment allegations can be resolved through informal resolution by mutual consent of the parties and on a basis that is acceptable to the Grievance Officer, the resolution process shall be considered finally decided and there will be no subsequent process or appeal.

The informal resolution process is not available for student complaints of sexual harassment against a staff member.

## **XI. Record Keeping**

Hoban will retain all records of each investigation instituted under this policy for at least seven (7) years. Records will include all documents, recordings, or transcripts from investigations, hearings, appeals, and informal resolutions. The first date of the first record created by Hoban will begin the seven year retention period. Records will be maintained for all investigations including investigations that have been dismissed, completed, or otherwise resolved.

Hoban will also maintain and publish on Hoban's website training materials of employees who serve as Grievance Officers, investigators, decision-makers, and persons who facilitate informal resolutions.

## **XII. Educational Programs**

The Grievance Officer, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive training on the definition of sexual harassment, the scope of Hoban's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. This includes how to apply the definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with this policy.

Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Decision-makers will receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Grievance Officers, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

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Training under this section is required on an as-needed basis. Training materials for training under this section will be made publicly available through Hoban's website.