

## **HR-33 Appendix A to the Graceland University Sexual Harassment Policy**

### Procedures for Title IX Investigations of Sexual Harassment

Graceland University seeks to establish a safe, inclusive environment where people can learn, develop, and live purposeful lives. Consequently, the Graceland University Sexual Harassment Policy HR-33 makes it clear that sexual harassment will not be tolerated. If instances of sexual harassment are reported, the following procedures will be followed. Terms capitalized herein but not otherwise defined shall have the meaning ascribed to such terms contained in the Graceland University Sexual Harassment Policy.

#### **PROCEDURES:**

##### Sexual Harassment Defined

For purposes of Title IX investigations, sexual harassment is defined as any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:

- A school employee conditioning an education benefit or service upon a person's participation in unwelcome sexual conduct (quid pro quo),
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activities.
- Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Graceland University Sexual Harassment Policy.)

##### Scope of the Title IX Statute

Graceland University (Graceland) must respond under the Title IX statute when: a) Graceland has actual knowledge of an allegation of sexual harassment; b) the alleged sexual harassment occurred within a Graceland-sponsored education program or activity (whether on or off campus); and c) the alleged harassment occurred against a person in the United States.

In addition to its Title IX obligations, Graceland is committed to ensuring that it investigates all instances of sexual harassment between its students and/or employees. When an instance of sexual harassment does not occur in a Graceland-sponsored educational program or activity in the United States, the investigation procedures, and remedies for such instances of sexual harassment will be governed by Graceland's Code of Conduct rather than the procedures outlined herein.

##### Reporting

Anyone may report an alleged instance of sexual harassment to the Title IX Coordinator in person, or by phone, mail, or email. Whenever an employee of Graceland (including faculty, staff, administration, and house presidents) becomes aware of an alleged instance of sexual harassment, they will promptly inform the Title IX Coordinator. The only employees exempt from this requirement are Graceland's Confidential Resources named in the Graceland University Sexual Harassment Policy, and includes Graceland's professional personal counselor(s) and Graceland's Director of Campus Ministries and Associate Campus Minister(s).

## The Grievance Process

### Initial Interview and Supportive Measures

Upon receiving a report of an alleged instance of sexual harassment, the Title IX Coordinator will promptly contact the Complainant confidentially in order to discuss with the Complainant the following two things:

- a) The availability of Supportive Measures, to consider the Complainant's wishes in regard to Supportive Measures, and to inform the Complainant that Supportive Measures are available whether or not the Complainant chooses to file a formal complaint. Supportive Measures are intended to help preserve equal access to education, protect student and employee safety, and/or deter sexual harassment. Supportive Measures may include, but are not limited to:
  - Imposition of a No-Contact Order
  - Rescheduling of exams and assignments
  - Providing alternative course completion options
  - A change in class schedule or transferring sections, including the ability to drop a course after the deadline
  - A change in work schedule or job assignment
  - A change in student's Graceland-owned residence
  - Limiting an individual or organization's access to certain Graceland facilities or activities pending resolution of the matter
  - Providing academic support services, such as tutoring
  - Any other remedy which can be tailored to the involved individuals to achieve the goals of the Sexual Harassment Policy HR-33
  
- b) The process for filing a formal complaint. The Title IX Coordinator will explain the formal complaint and the grievance process. The Title IX Coordinator will respect the Complainant's wishes regarding whether or not the Complainant wishes to file a formal complaint.

### The Formal Complaint

A formal complaint must a) allege sexual harassment against a respondent; b) request that Graceland investigate the alleged harassment; and c) be signed by the party filing the complaint (signature can be handwritten, electronic, or digital). The formal complaint can be filed by one of two parties. It may be filed by the Complainant, who must be participating in or attempting to participate in an educational program or activity of Graceland. In some cases, the Title IX Coordinator may file a formal complaint over the wishes of the Complainant if it involves a minor or if such action is not unreasonable in light of known circumstances that would suggest that filing a complaint is necessary for the protection of the campus community.

If the allegation(s) in a formal complaint do not meet the definition of sexual harassment as defined in this document (from the Title IX Final Rule), or did not occur in a Graceland-sponsored educational program or activity in the United States, then the allegation(s) will be dismissed for purposes of Title IX. (They still may be addressed through Graceland's Code of Conduct). A formal complaint or allegations therein may also be dismissed if the Complainant chooses to withdraw the complaint or allegation(s), or if the respondent is no longer enrolled or employed by Graceland, or if circumstances prevent the gathering of sufficient evidence to

reach a determination. Whatever the reason for dismissal may be, both parties must receive written notice of the dismissal and the reasons for the dismissal.

### Responding to a Formal Complaint

If the Title IX Coordinator determines that the allegations in the formal complaint do meet the definition of sexual harassment as defined in this document, an investigation into the matter will be initiated as an essential part of the grievance process. During this process, trained Title IX personnel will be used to objectively evaluate relevant evidence without prejudice of the facts and free from conflicts of interest or bias for or against either party. In addition, both parties' privacy will be protected by obtaining written consent before using a party's medical, psychological, or similar treatment records during the grievance process. At all times during the grievance process, the presumption of the Respondent's innocence will be applied so that Graceland bears the burden of proof relative to the standard of evidence.

Once a formal complaint is filed, Graceland will make every effort to complete the grievance process in a manner that is both thorough and timely. It is anticipated that most grievance processes will be completed within 60 calendar days after the formal complaint is filed.

**Notification.** The Title IX Coordinator will notify both the Complainant and the Respondent in writing that an investigation is being initiated. In doing so, both parties will receive notification of the allegation(s); the opportunity to select an advisor who may be, but does not need to be, an attorney; and the opportunity to submit and review evidence throughout the investigation. The notification will include the following details, to the extent known at the time: the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident. The written notice will include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will also inform the parties of any provision under Graceland's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notification will also confirm that Graceland uses the preponderance of evidence standard of evidence in determining responsibility.

The Respondent will be given sufficient time to review the notification and prepare a response before any initial interview occurs. In this meeting, the Title IX Coordinator should discuss Supportive Measures, and should explain the grievance process.

Any form of retaliation is not permitted. Therefore, the notification process will also include the affirmation that no retaliation is allowed. If a party or witness believes that they have been threatened with or experienced retaliation, they should exercise Graceland's grievance process and file that complaint with the Vice President for Student Life.

The use of any kind of informal resolution process, such as mediation or restorative justice, can only be implemented if both parties' voluntary, written consent is obtained. Informal processes may not be used in cases wherein an employee allegedly sexually harassed a student.

**Live Hearings.** Unless an informal process is voluntarily agreed to by both parties, a live hearing will be held as part of the grievance process. Live hearings are open only to the Complainant, the Respondent, both parties' advisors, the Decision-Maker, investigator(s) representing Graceland, and any essential witnesses. The Decision-Maker in any Title IX

grievance process cannot be the investigator(s) or the Title IX Coordinator. If a party does not have an advisor present at the hearing, Graceland, through the Title IX Coordinator will appoint an advisor for them who will serve in the advisor's role free of charge.

The following procedural requirements will apply to all Title IX investigations and hearings:

- a) The Title IX Coordinator must send written notice to parties of any investigative interviews, meetings, or hearings.
- b) The Title IX Coordinator, on behalf of Graceland, must send the parties and their advisors the evidence directly related to allegations with at least 10 days for the parties to review and respond to the evidence. Evidence can be sent electronically or in hard copy.
- c) The Title IX Coordinator, on behalf of Graceland must send the parties and their advisors an investigative report that fairly summarizes relevant evidence, with at least 10 days for the parties to respond. The report may be sent electronically or in hard copy.
- d) While the burden of gathering evidence and the burden of proof is on Graceland, both parties must be given the opportunity to present evidence as well as fact and expert witnesses.
- e) Cross-examination of either party or witnesses is allowed, but cross-examination must be conducted by the parties' advisors only. The parties themselves must never conduct cross-examination. Cross-examination must be conducted directly, orally, and in real time.
- f) Before any party or witness answers a question in a live hearing, the Decision-Maker must first determine if the question is relevant. If a question is determined to be irrelevant, the Decision-Maker must explain to the advisor asking the question why the question is deemed not relevant.
- g) If a party or a witness does not submit to cross-examination at the live hearing, the Decision-Maker must not rely on any statement of that party or witness in reaching a determination about responsibility.
- h) During a live hearing, Complainants must be protected from being asked about their prior sexual history, except when offered to prove that someone other than the Respondent committed the alleged misconduct or when offered to prove consent.
- i) At the request of either party, Graceland must provide for the entire live hearing to occur with the parties located in separate rooms, with technology enabling the parties to see and hear one another. At Graceland's discretion, "separate rooms" could be in different geographic locations.
- j) An audio, audiovisual, or transcript must be kept of the live hearing.

**Determination of Responsibility.** At the conclusion of a hearing, the Decision-Maker will consider all evidence. After doing so, the Decision-Maker will determine that the Respondent is either "responsible" for the allegation(s) brought against him/her, or "not responsible".

If the Decision-Maker finds that a Respondent is responsible for an allegation, they will prescribe remedies (consequences) to be implemented. Remedies (consequences) may include, but are not limited to:

- Conduct probation
- Counseling
- Fines

- Community service
- Strict conduct probation
- Dismissal from Graceland
- Implementation or continuation of No Contact Orders
- Removal from classes shared with the Complainant
- Education/training

Once the Decision-Maker has reached a conclusion of responsible or not responsible, they will send both parties a written determination regarding responsibility or non-responsibility, explaining how and why the decision was reached. If the Respondent is found responsible, the document will include the remedies (consequences) prescribed.

**Dismissal.** A formal complaint or allegation may be dismissed under three circumstances: a) the allegation does not meet the definition of sexual harassment as defined in this document; b) the Complainant withdraws the formal complaint or allegation; or c) the Respondent is no longer enrolled or employed at Graceland. However, if Graceland has reasonable cause to believe that a Respondent has withdrawn from Graceland in order to avoid allegations of sexual harassment, Graceland may continue with the grievance process.

**Appeals.** Both parties will be offered the opportunity to appeal from a determination of responsibility. The opportunity to appeal will be stated in the determination letter from the Decision-Maker. Parties may appeal from a determination of responsibility or from a specific remedy prescribed by the Decision-Maker. In addition, parties will be given the opportunity to appeal from the dismissal of a complaint or allegation. All appeals must be based on one or more of the following: a) a procedural irregularity that affected the outcome of the matter; b) newly discovered evidence that could affect the outcome of the matter; or c) Title IX personnel having had a conflict of interest or bias that affected the outcome of the matter. The appealing party must provide evidence to substantiate the basis of the appeal.

Appeals must be made in writing (email or hard copy) and must be received within 14 days of a party receiving a determination notification or receiving notice that a complaint or allegation has been dismissed.

Appeals are considered by the Vice Presidents Council, consisting of the Vice President for Academic Affairs (VPAA) and one other Vice President of the VPAA's choosing. Neither Vice President can serve as an appellate officer if they were involved in the grievance process in any way. The VPAA will notify both parties, as well as the Title IX Coordinator, in writing that the matter in question is under appeal. This notification will include who has filed the appeal, what the basis of the appeal is, who will constitute the Vice Presidents Council, and that both parties will be notified of whatever determination is arrived at by the Vice Presidents Council.

The Vice Presidents Council will review the basis for appeal to determine if it meets one of the criteria identified above. If the appeal does not meet the criteria, then the appeal will be denied. If the appeal meets one of the criteria, then the Vice Presidents Council will consider the matter in question. In doing so, the Vice Presidents Council may choose to call upon either or both parties and/or their advisors for information. The Vice Presidents Council may also call upon the Decision-Maker or Title IX Coordinator to confidentially submit any other evidence that the Vice Presidents Council may request in order to adequately consider the appeal.

Once the Vice Presidents Council has reached a conclusion regarding the appeal, they will inform both parties in writing. This will include whether the appeal was upheld or denied, and the rationale for the Vice President Council's decision. The consideration of appeals will be concluded within 21 days from the date the appeal was received by the VPAA.

The VPAA will send a copy of the appeal to the Title IX Coordinator.

#### Records

All records of evidence, interviews, official Graceland communications between parties, and the audio recording of the live hearings will be kept in a confidential file by the Title IX Coordinator.