

# Concorde Statement of Nondiscrimination, Notice of Nondiscrimination and Grievance Procedures for Complaints of Title IX Discrimination

Effective date: 08/16/2024

## **Statement of Nondiscrimination**

Concorde does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

## **Notice of Nondiscrimination**

Concorde does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission<sup>4</sup> and employment.

Inquiries about Title IX may be referred to Concorde's Title IX Coordinator, the

U.S. Department of Education's Office for Civil Rights, or both. Concorde's Title IX Coordinator is:

[Koula Foura, M.Ed](#)

Lead Title IX Coordinator

6701 W. 64<sup>th</sup> St., Suite 200- Building 5

Overland Park, KS 66202

Office: 913.745.2219

Fax: 913.831.6556

Email: [TITLIX@concorde.edu](mailto:TITLIX@concorde.edu)

An anonymous report may be filed with Lighthouse, a third-party service, by calling, emailing or filing an online report as provided below:

1-855-400-6004

[reports@lighthouse-services.com](mailto:reports@lighthouse-services.com)

Website: [www.lighthouse-services.com/concorde](http://www.lighthouse-services.com/concorde)

Campus Presidents have been designated as confidential resources. Any person may make a confidential report or discuss matters related to Concorde's nondiscrimination policy and grievance procedures privately with their respective Campus President. Such communications will be maintained in confidence unless information is shared which represents an imminent threat to the health or safety of any person.

Concorde's non-discrimination policy and grievance procedures can be located in your college catalog "Student Complaint & Grievance Policy" and "Non-Discrimination Policy".

## **Grievance Procedures for All Complaints of Sex Discrimination**

Concorde has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

### **Complaints:**

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that Concorde investigate and make a determination about alleged discrimination under Title IX:

- A "complainant," which includes:
  - a student or employee of Concorde who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of Concorde who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Concorde's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- Concorde's Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee of Concorde; or
- Any person other than a student or employee who was participating or attempting to participate in Concorde's education program or activity at the time of the alleged sex discrimination.

Concorde may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances, unless such consolidation would violate FERPA. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

#### **Basic Requirements of Title IX Grievance Procedures:**

Concorde will treat complainants and respondents equitably.

Concorde requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

Concorde presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Concorde has established the following timeframes for the major stages of the grievance procedures: evaluation (7-14 days); investigation (30-60 days); determination (30-60 days) and appeal (30-60 days).

The parties have the right to expect that the Grievance Procedures set forth herein will begin promptly following the filing of a Formal Complaint and proceed in a timely manner. Concorde shall consider requests for extensions or delays, only for good cause. If the process is delayed or a deadline is extended, the College will so notify the parties, in writing.

Concorde will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

Concorde will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Concorde to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless Concorde obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

**Notice of Allegations:**

Upon initiation of Concorde's Title IX grievance procedures, Concorde will notify the parties of the following:

- Concorde's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, Concorde decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, Concorde will notify the parties of the additional allegations.

**Dismissal of a Complaint:**

Concorde may dismiss a complaint of sex discrimination if:

- Concorde is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in Concorde's education program or activity and is not employed by Concorde;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and Concorde determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- Concorde determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, Concorde will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, Concorde will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Concorde will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

Concorde will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then Concorde will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, Concorde will:

- Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, Concorde will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Concorde's education program or activity.

### **Investigation:**

Concorde will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on Concorde—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Concorde will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible.

Concorde will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Concorde will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- Concorde will provide an equal opportunity to access the relevant and not otherwise impermissible evidence;
- Concorde will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- Concorde will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

### **Questioning the Parties and Witnesses:**

Concorde will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

Concorde's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:

- Allow the decisionmaker to ask such questions during individual meetings with a party or witness;
- Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
- Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

*Procedures for the decisionmaker to evaluate the questions and limitations on questions:* The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed

and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.

*Refusal to respond to questions and inferences based on refusal to respond to questions:* The decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

### **Determination Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Concorde will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties in writing of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable.
- Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of remedies to a complainant and other people Concorde identifies as having had equal access to Concorde's education program or activity limited or denied by sex discrimination.
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Concorde's education program or activity.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

### **Appeal of Determinations:**

Concorde offers the following process for appeals from a determination whether sex discrimination occurred:

- **Procedural irregularity:** there was an irregularity in the processing of the Formal Complaint (e.g., investigation or hearing) that affected the outcome of the matter;
- **New Evidence:** there is evidence that was not reasonably available before or at the time the determination regarding responsibility was made that could reasonably affect the outcome of the matter; or
- **Conflict of Interest:** The Lead Title IX Coordinator, investigator and/or grievance officer had a conflict of interest or bias for or against survivors/victims or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

**Written Appeal:** In order to initiate the appeal process, a party must submit the appeal, in writing, to the Lead Title IX Coordinator no later than five (5) business days following receipt of the Determination Notice. The appeal must be based upon at least one of the allowable bases for appeal. Upon receipt of the Appeal the Lead Title IX Coordinator will send a Notice of Appeal to all parties providing them with the copy of the written appeal and allowing for both parties to submit to the Lead Title IX Coordinator a written statement in support of or challenging the relevant determination and any statements contained in the Appeal.

**Assignment of Appellate Officer:** Within three (3) business days following receipt of the parties' statements or expiration of the deadline to submit statements, the Lead Title IX Coordinator will assign an Appellate Officer to

consider the appeal and will provide written notice to the parties of the identity of and contact information for the Appellate Officer along with an explanation of the process for challenging the assignment based on conflict of interest or bias. Any challenge must be resolved before the Appeal review process may begin.

**Review Process:** For purposes of considering and coming to a conclusion about the appeal, the Lead Title IX Coordinator will provide the Appellate Officer with access to the Appeal, written responses thereto, written determination subject to appeal, evidence, Investigative Report (if applicable) and any other relevant records received, created or maintained as part of these procedures. The Appellate Officer has authority to conduct additional interviews or inquiries only as may be necessary to seek clarification on issues specifically raised in the Appeal.

**Appeal Decision:** Within thirty (30) business days following receipt of the Appeal and relevant materials, the Appellate Officer will make a determination and provide written notice to all parties, with a copy to the Lead Title IX Coordinator, of the result of the appeal and the rationale for that result.

This appeal process will be, at a minimum, the same as Concorde offers in all other comparable proceedings, including proceedings relating to other discrimination complaints.

#### **Informal Resolution, if offered:**

At Concorde's discretion, in lieu of resolving a complaint through Concorde's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. Concorde does not offer informal resolution when such a process would conflict with Federal, State, or local law.

#### **Supportive Measures:**

Concorde will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to Concorde's education program or activity or provide support during Concorde's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include but are not limited to no contact directives, scheduling adjustments, academic accommodations or leaves of absence.

#### **Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, Concorde may impose disciplinary sanctions, which may include warnings, probation, loss of privileges or dismissal or expulsion. Concorde may also provide remedies, which may include no contact directives, scheduling adjustments, academic accommodations, training and awareness activities, campus security measures or leaves of absence.

## **Grievance Procedures for Complaints of Sex-Based Harassment Involving Student Complainants or Student Respondents**

Concorde has adopted Title IX grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These grievance procedures address complaints of sex-based harassment that involve a student party.

#### **Complaints:**

The following people have a right to make a complaint of sex-based harassment, requesting that Concorde investigate and make a determination about alleged sex-based harassment under Title IX:

- A "complainant," which includes:
  - a student or employee of Concorde who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
  - a person other than a student or employee of Concorde who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Concorde's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or

- Concorde's Title IX Coordinator.

Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

Concorde may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

### **Basic Requirements of Title IX Grievance Procedures:**

Concorde will treat complainants and respondents equitably.

Concorde requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. As long as there is no conflict of interest or bias, a decisionmaker may be the same person as the Title IX Coordinator or investigator.

Concorde presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Concorde has established the following timeframes for the major stages of the grievance procedures: evaluation (7-14 days) (*i.e.*, the decision whether to dismiss or investigate a complaint); investigation (30-60 days); determination (30-60 days) and appeal (30-60 days).

The parties have the right to expect that the Grievance Procedures set forth herein will begin promptly following the filing of a Formal Complaint and proceed in a timely manner. Concorde shall consider requests for extensions or delays, only for good cause. If the process is delayed or a deadline is extended, the College will so notify the parties, in writing.

Concorde will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

Concorde will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by Concorde to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless Concorde obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

### **Written Notice of Allegations:**

Upon initiation of these Title IX grievance procedures, Concorde will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- Concorde's Title IX grievance procedures and any informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence; and
- Knowingly making false statements or knowingly submitting false information during the grievance procedures constitutes a violation of Concorde's Code of Conduct which prohibits intentional acts to impair, interfere with, or obstruct the orderly conduct, processes, and functions of Concorde

If, in the course of an investigation, Concorde decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a consolidated complaint, it will provide written notice of the additional allegations to the parties.

### **Dismissal of a Complaint:**

Concorde may dismiss a complaint if:

- Concorde is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in Concorde's education program or activity and is not employed by Concorde;
- Concorde obtains the complainant's voluntary withdrawal in writing of any or all of the allegations, the Title IX Coordinator declines to initiate a complaint, and Concorde determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- Concorde determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, Concorde will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, Concorde will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then Concorde will notify the parties simultaneously in writing.

Concorde will notify the complainant that a dismissal may be appealed on the bases outlined in the *Appeals* section. If dismissal occurs after the respondent has been notified of the allegations, then Concorde will also notify the respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, Concorde will follow the procedures outlined in the *Appeals* section.

When a complaint is dismissed, Concorde will, at a minimum:

- Offer supportive measures to the complainant as appropriate.
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Concorde's education program or activity

### **Investigation:**

Concorde will provide for adequate, reliable, and impartial investigation of complaints.

The burden is on Concorde—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Concorde will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.



Concorde will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- Concorde will not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding.
- Concorde may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.

Concorde will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.

Concorde will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

Concorde will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Concorde will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:

- Concorde will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence;
- Concorde will provide a reasonable opportunity to review and respond to the evidence. If Concorde conducts a live hearing as part of its grievance procedures, it will provide this opportunity to review the evidence in advance of the live hearing.; and
- Concorde will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures.

#### **Questioning the Parties and Witnesses:**

Concorde will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.

Concorde's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will allow the decisionmaker to ask such questions, and either:

Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker, subject to the procedures for evaluating and limiting questions discussed below;

*Procedures for the decisionmaker to evaluate the questions and limitations on questions:* The decisionmaker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an opportunity to clarify or revise a question that the decisionmaker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.

*Refusal to respond to questions and inferences based on refusal to respond to questions:* The decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

#### **Procedures for a Live Hearing:**

Concorde will conduct the live hearing with the parties physically present in the same geographic location or, at Concorde's discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the decisionmaker and parties to simultaneously see and hear the party or witness while that person is speaking.

Concorde will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

### **Determination Whether Sex-Based Harassment Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Concorde will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the parties simultaneously in writing of the determination whether sex-based harassment occurred under Title IX including:
  - A description of the alleged sex-based harassment;
  - Information about the policies and procedures that Concorde used to evaluate the allegations;
  - The decisionmaker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
  - When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions Concorde will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by Concorde to the complainant, and, to the extent appropriate, other students identified by Concorde to be experiencing the effects of the sex-based harassment; and
  - Concorde's procedures and permissible bases for the complainant and respondent to appeal.
- Concorde will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator will:
  - Coordinate the provision and implementation of remedies to a complainant and other people Concorde identifies as having had equal access to Concorde's education program or activity limited or denied by sex discrimination;
  - Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Concorde's education program or activity.
- Comply with the Title IX grievance procedures before the imposition of any disciplinary sanctions against a respondent; and
- Not discipline a party, witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

The determination regarding responsibility becomes final either on the date that Concorde provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

### **Appeals:**

Concorde will offer an appeal from a dismissal or determination whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If a party appeals a dismissal or determination whether sex-based harassment occurred, Concorde will:

- Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- Implement appeal procedures equally for the parties;

- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Communicate to the parties in writing that Concorde will provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal Concorde offers will be equally available to all parties.

### **Informal Resolution:**

At Concorde's discretion, in lieu of resolving a complaint through Concorde's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. Concorde will inform the parties in writing of any informal resolution process it offers and determines is appropriate, if any. Concorde will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, Concorde will explain in writing to the parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information Concorde will maintain and whether and how Concorde could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

### **Supportive Measures:**

Concorde will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the Concorde's education program or activity or provide support during Concorde's Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include but are not limited to no contact directives, scheduling adjustments, academic accommodations or leaves of absence.

### **Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, Concorde may impose disciplinary sanctions, which may include warnings, probation, loss of privileges or dismissal or expulsion. Concorde may also provide remedies, which may include no contact directives, scheduling adjustments, academic accommodations, training and awareness activities, campus security measures or leaves of absence.

**Definitions.** For purposes of this policy and these procedures, the following terms shall have the meanings set forth below:

*Affirmative Consent* means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that the other(s) involved affirmatively consent(s) to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them should never by itself be assumed to be an indicator of consent. Valid consent does not exist if Respondent knew or should have known that Complainant was unable to consent because Complainant was asleep or unconscious; was incapacitated due to drugs, alcohol or medication; or Complainant was unable to communicate due to a mental or physical condition.

*Complainant* means:

- (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part; or
- (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the

recipient's education program or activity at the time of the alleged sex discrimination.

*Complaint* means an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

*Confidential employee* means:

(1) An employee of a recipient whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) An employee of a recipient whom the recipient has designated as confidential under this part for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

(3) An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

*Disciplinary sanctions* means consequences imposed on a respondent following a determination under Title IX that the respondent violated the recipient's prohibition on sex discrimination.

*Party* means a complainant or respondent.

*Peer retaliation* means retaliation by a student against another student.

*Relevant* means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

*Remedies* means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had their equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

*Respondent* means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

*Retaliation* means intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or an employee or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1). Nothing in this definition or this part precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service under the recipient's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

*Sex-based harassment* prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including:

(1) *Quid pro quo harassment*. An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in the recipient's education program or activity; or

(3) *Specific offenses.*

(i) Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

(ii) Dating violence meaning violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship; and

(3) The frequency of interaction between the persons involved in the relationship;

(iii) Domestic violence meaning felony or misdemeanor crimes committed by a person

who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shares a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

(iv) Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

*Student* means a person who has gained admission.

*Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

(1) Restore or preserve that party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the parties or the recipient's educational environment; or

(2) Provide support during the recipient's grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).