

# UNIVERSITY OF DETROIT MERCY INTERIM SEXUAL AND GENDER HARASSMENT POLICY AND RESOLUTION PROCESS

ATIXA 2020 ONE POLICY, TWO PROCEDURE MODEL

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## INTERIM POLICY PROHIBITING SEXUAL AND GENDER BASED HARASSMENT

### 1. POLICY DEFINITIONS

- x **Advisor:** a person chosen by a Party, or appointed by the University, to accompany the Party to meetings related to the grievance process, to advise the party on that process, and to conduct cross-examination for the Party at the hearing, if any.
- x **Complainant:** A Person who is alleging sexual or gender based harassment or discrimination based on a protected class; or alleging retaliation for engaging in a protected activity, or a person on whose behalf the University conduct an investigation based on the alleged conduct.
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- x Sanction a consequence imposed by the University on a Respondent who is found to have violated this policy, or imposed on a Complainant found to have violated this policy based on a counterclaim made in good-faith response to Complainant's allegation.
- x Sexual Harassment: unwelcome conduct that is severe, pervasive and objectively offensive and effectively denies a person access to the school's education programs or activities, as defined by the following terms: sexual assault; stalking; domestic violence; and dating violence.
- x Gender-based harassment: verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.
- x Title IX Coordinator: The University Title IX Coordinator and/or any University Deputy Title IX Coordinator designated by the University to ensure compliance with Title IX and the University's Title IX program.
- x Title IX Team: The University Title IX Coordinator and/or any University Deputy Title IX Coordinator.
- x University Community: refers to Students, Employees and Third Parties.

## 2. Rationale for Policy

The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation including sexual and gender-based harassment or discrimination based on a protected class. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to

campus, with the Equal Employment Opportunity Commission, or other human/civil rights agencies.

This Policy covers nondiscrimination both in employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the University's nondiscrimination statement.

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The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and

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EXTERNAL INQUIRIES REGIONAL

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Violations of no contact orders are referred to the appropriate department including but not limited to Student Affairs, Human Resources or Public Safety.

#### 9. Emergency Removal

The University may act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis after completion of an individualized safety and risk analysis resulting in a determination that the Respondent poses an immediate threat to a Complainant or other members of the University community. The Student Concern and Care Team

This policy applies to the education program and activities of the University as well as conduct that takes place on the campus; or on property owned or controlled by the University; at University sponsored events; or in buildings owned or controlled by the University; registered student organizations. The Respondent must be a member of the University community in order for this Policy to apply.

Regardless of whether the Respondent is a member of the University's community, Complainant may obtain supportive measures from the University determined and arranged by the Title IX Coordinator.

Although alleged online harassment and misconduct relating to sexual or gender-based harassment is reported as having been made on social media, blogs, or other digital forms of media that cannot be controlled by the University, the University will engage in a variety of means to address and mitigate the effect of such communications. This includes application of the University's [Computer Use & Security Policy](#) linked here:





A. In General. There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. In the University context, such positions include but are not limited to teacher and student, supervisor and employee, senior faculty and junior faculty, mentor and trainee, teaching assistant and student, coach and athlete, preceptor and student, staff and student, and the individuals who supervise the day student living environment and student residents. These relationships may, moreover, be less consensual than the individual whose position confers power believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect. The asymmetry of the relationship can lead to a potentially exploitive relationship. Where such a relationship exists, the University will in general be unsympathetic to a defense based upon consent when the facts establish the professional staff student, supervisor employee, senior faculty junior faculty, mentor trainee, teaching assistant student, preceptor student, or supervisor student resident power differential existed within the relationship.

B. With Students (Regulation 567496(13)-756(es)-6 (e) 1016 d-3D) 07 01 (e) 10-0.008.01 (23(89032.60 TC UdT(w) Tj) 9

clear permission regarding willingness to engage in, and the conditions of, sexual activity. Consent to some sexual contact such as kissing or fondling cannot be presumed to be consent for other sexual activity such as intercourse. The existence of a current or previous intimate relationship is not sufficient to constitute consent.

- x Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because that individual lacks conscious knowledge of the nature of the act sufficient to understand the who, what, where, when, why or how of the sexual interaction, and/or is physically helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware or uncertain that sexual activity is occurring. Incapacitation may also result from the use of alcohol and/or other drugs. Being intoxicated or impaired by drugs or alcohol is never an excuse and does not diminish the responsibility to obtain consent.

e. Other Types of Sexual or Gender-based Harassment or Misconduct Governed by Other University of Detroit Mercy Policies, Codes of Conduct, or Codes of Community Standards.

In addition to the forms of sexual harassment described under b., Sexual Harassment, above, which are covered by Title IX, the University also prohibits the following offenses as forms of sex and gender harassment that may be within or outside of Title IX and may include actions based upon an individual's actual or perceived membership in a

- 1f. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;
- 1g. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;
- 1h. Emotionally blackmailing or forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
- 1i. Knowingly soliciting a minor for sexual activity;
- 1j. Engaging in sex trafficking;
- 1k. Knowingly possessing or disseminating child pornography;
- 1l. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- 1m. Discriminatory harassment that is sex or gender based and is not categorized or listed above, but may consist of actions that deprive, limit, or deny educational or employment access, benefits, or opportunities to students or employees or potential students or employees.
- 1n. Bullying that is repeated and/or severe and involves aggressive behavior that is likely to intimidate or to intentionally hurt, control, or diminish another person physically and/or mentally;
- 1o. Intimidation that consists of explicit or implicit threats or acts that cause an unreasonable fear of harm in another.
2. Hazing includes sex based acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation ha



The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Suspected retaliation should be reported immediately to a member of the Title IX Team. The University will take all and appropriate and available steps to protect individuals who fear that they may be

Victim Assistance Services, Oakland County Prosecutor's Office - (248) 858-0707

End Violent Encounters (EVE) 24-hour Hotline: 517.372.5572 EVE is a confidential community-based program providing supportive services to survivors of domestic abuse and sexual violence.

Wayne County SAFE 2727 Second Avenue, Detroit, MI 48201, 313.964.9701

Health care professionals are required to maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

#### 18. When a Complainant Does Not Wish to Proceed with the Resolution Process

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator or a Deputy Title

made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Parties or witnesses knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation are subject to discipline under University policy.

#### 21. Amnesty for Good Faith Reporting by Complainants and Witnesses

The University will not pursue disciplinary action against student Complainants or witnesses for disclosure of personal consumption of alcohol or other drugs whether underage or illegal if the disclosure is made in connection with a disclosure of a potential violation of this Policy. The University strongly encourages the reporting of prohibited conduct under this Policy. It is in the best interest of this community that Complainants report to university officials and that participants in the grievance process are forthright in sharing information.

To guard against discouraging reporting or participation, a student who reports or participates in the grievance process, either as a Complainant, Respondent, or witness, will not be subject to disciplinary action by the University for personal consumption of alcohol or drugs or violations of other University policies in effect at the time of the incident provided that such violations did not and do not place the health or safety of any other person at risk and do not involve plagiarism, cheating, or academic

2. Avoid showering, bathing, washing hands or face, or douching if possible but evidence may still be collected even if this occurs.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag and not a plastic bag which destroys evidence or secure evidence container.
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

## INTERIM RESOLUTION PROCESS: FORMAL AND INFORMAL RESOLUTION (PROCESS A AND PROCESS B, RESPECTIVELY)

### 1. Overview

1. The University provides a formal resolution process known as Process A which is described below in 1a. Based on U.S. CFR 106.30, certain types of alleged sexual harassment are covered by the Title IX process. (.)JT(y)1.5 1(RO)3 (Ct)1.7 (RO)29





conduct alleged in the formal complaint would not constitute sexual harassment as defined in the University's Policy even if proved; and/or

- a. The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations) and/or the University does not have control of the Respondent and/or
- b. The conduct did not occur against a person in the United States; and/or
- c. At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in the education program or activity of the University.

#### 5. Discretionary Dismissal

The University may dismiss a formal complaint or any allegations contained within the complaint if at any time after intake meeting with the Complainant any of the following occurs:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint including any or all of the allegations included in the complaint; or
- b. The Respondent is no longer enrolled in or employed by the University;
- c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination of the allegations contained in the Formal Complaint.

Upon dismissal for mandatory or permissive grounds, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties at their University email addresses.

Either a mandatory or discretionary dismissal decision is appealable by any Party under the procedures for appeal below. If a Complainant decides to withdraw a complaint, they may later request to reinstate or refile it.

bias will be explored by the hearing officer and may result in the need for a different Advisor to conduct cross-examination at the hearing.

The University may permit parties to have more than one Advisor upon special request made to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator, or Deputy Title IX Coordinator, and will be granted equitably to all parties.

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator, or Deputy Title IX Coordinator, will also offer to assign a trained Advisor if a Party has not selected and obtained an Advisor on their own by the time of the hearing or scheduling of the hearing.

b. Advisor's Role in Meetings and Interviews

The Parties may be accompanied by their Advisor to all meetings and interviews at which the Party is entitled or asked to be present including intake and interviews. Advisors should help Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

If one Party selects an Advisor who is an attorney, but the other Party opts not to do so or cannot afford an attorney, the University will appoint a trained internal Advisor, employee of the University, and



#### e. Sharing Information with the Advisor

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor, or other individuals if they wish, as doing so may help the parties to readily participate in the resolution process.

The University will provide a consent form that authorizes the University to share information directly with a Party's Advisor. The parties must complete and submit this form to the Title IX Coordinator.

#### f. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. Shared records may not be shared with third parties, disclosed publicly, or used for purposes not consistent with the resolution process.

#### g. Expectations of an Advisor

The University expects an Advisor to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend if doing so does not cause an unreasonable delay.

#### h. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the grievance process. The parties are expected to provide timely notice to the Title IX Coordinator, or Deputy Title IX Coordinator, if they change Advisors at any time. If a Party changes Advisors, consent to share information with the previous Advisor is terminated, and a release and confidentiality agreement for the new Advisor must be signed by the new Advisor. Parties are expected to inform the Title IX Coordinator of the identity of a new Advisor at least two calendar days before their scheduled hearing date.

### 8. Resolution Processes: Formal Resolution (Process A) and Informal

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x The identity of the involved parties (if

The Title IX Coordinator, or Deputy Title IX Coordinator, will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the Formal Resolution Process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator, or Deputy Title IX Coordinator, will determine whether the concern is reasonable and supportable.

Any concerns of conflict of interest or bias by the Title IX Coordinator should be raised with the University Legal Counsel.

The Formal Resolution Process involves an objective evaluation of all relevant evidence. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent or witness.

The University presumes that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

#### 12. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses or potential police involvement or concurrent police investigations.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and the Title IX Coordinator, or other member of the Title IX Team, if the Title IX Coordinator serves as the Investigator, will communicate regularly with the Parties to update them on the progress and timing of the investigation.

#### 13. Unavoidable delays in the Investigation Process

The University may undertake a short delay in its investigation from several days to a few weeks if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of available parties and/or witnesses, and/or accommodations for disabilities or health conditions. The University will implement, or continue to implement, supportive measures as deemed appropriate during any delay of the Investigation Process included within the Formal Resolution Process. The University will email the Parties regarding any anticipated duration and provide them reason for such duration.

#### 14. Formal Resolution Procedure – Investigation Stage

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Occasionally, a Witness may ask the investigator if they can provide a written statement in lieu of an investigation interview and, if this occurs, the Witness may choose to respond to written questions if deemed appropriate by the Investigator(s). This is not preferred as CFR 106.45 does not allow a written statement prepared by a witness to be used as evidence at a hearing and eliminates the opportunity and requirement for cross-examination unless the witness appears at the hearing and cooperates with cross-examination.

#### 16. Recording of investigation Interviews

No unauthorized audio or video recording of any kind by a Party, Witness, or Advisor is permitted during investigation meetings. The investigator(s) must first instruct Parties of intent to record a person investigation interview before starting the interview. Investigation interviews conducted in person will not be automatically recorded and are only likely to be recorded if a second investigator is not available. The investigator will record all virtually conducted interviews.

#### 17. Evidentiary Considerations in the Investigation

As required by CFR 106.45, an investigator may not consider: 1) incidents not directly related to the possible violation unless they evidence a pattern; or 2) 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, if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### 18. Notice of Hearing (NOH)

##### a. Title IX Coordinator Notification to Hearing Officer and Parties

After the investigation is completed and investigation report prepared, the Title IX Coordinator, or Deputy Title IX Coordinator, will send Notice of Hearing to the Parties.

Barring request for expedited timeline communicated in writing by all Parties, a hearing cannot be scheduled and cannot take place fewer than 10 calendar days from the date the final investigation report is transmitted to the parties and their Advisors.

The Title IX Coordinator, or a Deputy Title IX Coordinator, will select an appropriate Hearing Officer and Decision-maker from the Title IX Team, or external to the University, and will notify the Parties of the Hearing Officer at the time the Notice of Hearing is emailed to them.



following: 1) incidents not directly related to the possible violation unless they evidence a pattern; or 2)



The Hearing Officer may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing.

- c. Who attends: In addition to the Parties and their Advisors, the Hearing Officer may request participation of either or both the Title IX Coordinator and University General Counsel.
- d. Recording Pre-hearing meetings are recorded using audio and/or video.

### 23. Joint or Individual Hearings

In hearings involving more than one Respondent, or more than one Complainant who has alleged that the Respondent(s) engaged in the same or substantially similar conduct, the Title IX Coordinator, or Deputy Title IX Coordinator, will determine whether allegations should be heard in one joint hearing or separate hearings.

The Title IX Coordinator, or Deputy Title IX Coordinator, may permit the Hearing pertinent to each.

The Hearing Officer may discuss relevance with the Advisors if the Hearing Officer would like to do so in determining whether a question is relevant. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious and irrelevant as a result, or abusive. The Hearing Officer has the final say on all questions and determinations of relevance subject to any appeal. The Hearing Officer may consult with University legal counsel on any questions of admissibility. The Hearing Officer may also ask Advisors to frame why a question is or is not relevant from their perspective but will not engage in discussion from the Advisors on relevance once the Chair has ruled on a question.

If any Party raises an issue of bias or conflict of interest on the part of the Investigator or Hearing Officer, the Chair may elect to address those issues by consulting with legal counsel or referring them to the Title IX Coordinator or preserve them for appeal. If bias is not raised as an issue at the hearing, the Hearing Officer should not permit irrelevant questions that probe for bias.

#### 25. Refusal to Submit to Cross Examination and Inferences

The Decisionmaker(s) may not draw any inference solely from a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions at the hearing.

If alleged policy violations other than sexual harassment are considered at the same hearing, the Hearing Officer may consider all evidence it deems relevant, may rely on any

person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

#### 27. Finding, Final Determination and Standard of Proof

The Hearing Officer and Decision-maker will determine whether the Respondent is responsible, or not responsible, for the policy violation(s) in question using preponderance of evidence as the standard of proof.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider any previously submitted impact statements by either Party in determining appropriate sanction(s). The Hearing Officer and Decision-maker will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Party. The Decision-maker(s) may consider impact statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate University administrator and will determine the appropriate sanctions after consultation with other appropriate University administrators including the Dean of Students; Provost and Vice-President for Academic Affairs; and/or Human Resources Association Vice President.

The Hearing Officer will then prepare a written deliberation statement typically not exceeding three (3) to five (5) pages in length and email it to the Title IX Coordinator within three (3) to five (5) business days of conclusion of the hearing detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and sanctions if a finding of responsibility has been made.

Sanctions are implemented as soon as feasible and upon expiration of time within which appeal may be sought or upon the outcome of an appeal granted and decided by the Appeals Officer.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

Sanctions that may be imposed

### 31. Appeals

Any Party may file a request for appeal in writing and email it to the Title IX Coordinator within seven (7) business days of delivery of the Notice of Outcome. The Title IX Coordinator, or Deputy Title IX Coordinator, will forward Request for Appeal to the Appeal Chair for the ~~University~~ campus where the student



- x Permanent alteration of housing assignments;
- x Permanent alteration of work arrangements for employees;
- x Provision of campus safety escorts;
- x Climate surveys;
- x Policy modification and/or training;
- x Provision of transportation accommodations;
- x Implementation of long-term contact limitations between the parties;
- x Implementation of adjustments to academic deadlines and course schedules.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator, or Deputy Title IX Coordinator, will address any remedies owed by the University to the Respondent to ensure effective denial of educational access.

The University will maintain the confidentiality of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

### 33. Failure to Comply with Sanctions and/or Long-term Remedies

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision(s) including the Appeal Officer.

Failure to abide by the sanction(s) or action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved

- c. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- d. Any appeal and the result;
- e. Any Informal Resolution and the result of the Informal Resolution
- f. All materials used to train Title IX Coordinators, Investigators, Decision makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website.
- g. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual or gender-based harassment or discrimination against a member of a protected class including:
  - i. The basis for all conclusions that the response was not deliberately indifferent;
  - j. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - k. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

### 36. Training



If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this policy and its procedures will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of Federal and State of