

# NORTHLAND COLLEGE

## GRIEVANCE PROCESS FOR ALLEGED VIOLATIONS OF THE SEXUAL AND GENDER-BASED HARASSMENT POLICY

### **1. Overview**

Northland College (the “College”) will act on any formal or informal notice/complaint of violation of the College's Policy on Sexual and Gender-Based Harassment (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If a dismissal occurs under Process A because the complaint does not contain qualifying allegations of sexual harassment, please see Appendix 1 which contains a description of the procedures applicable to the resolution of other offenses, referred to as “Process B.” Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student code of conduct and/or the employee handbooks when applicable.

### **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution (following the submission of a formal complaint); and/or
- 3) A Formal Grievance Process (according to Process A) including an investigation and a hearing (following submission of a formal complaint).

The College uses the Formal Grievance Process (Process A) to determine whether or not the Policy has been violated. If the College determines a violation occurred, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

### 3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator, or their designee, engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to file a formal complaint, the Title IX Coordinator determines whether to initiate a complaint because a risk assessment indicates a compelling threat to health and/or safety on campus.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor. The College does not provide a Complainant or Respondent an advisor throughout the investigation process, but will provide an Advisor to either party for a hearing if the party does not already have an Advisor for purposes of the hearing.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their objectives, assesses any request(s), and implements whatever measures the Title IX Coordinator deems appropriate. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and if appropriate will ask if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does fall within the scope of Title IX, the Title IX Coordinator will initiate the formal investigation and grievance process (Process A), directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate concern, based on the nature of the complaint.
    - If it does not fall within the scope of Title IX, the Title IX Coordinator will “dismiss” that aspect of the complaint, will assess which College policies may apply (if any), and will refer the matter for resolution under Process B.
  - Dismissing a complaint under Title IX on a procedural basis for lack of coverage under Title IX **does not limit** the College’s authority to address a complaint with an appropriate process and remedies.

#### **a. Threat Assessment**

In many cases, the Title IX Coordinator may determine that a threat assessment should be conducted by the members of the Title IX Team (Title IX Coordinator, and/or Title IX Deputy Coordinator and/or

Official with Authority) as part of the initial assessment. As part of their threat assessment, the Team will review the complaint and any other relevant information to assess the threat posed by the reported conduct to the health and safety of the Complainant and/or the College community and determine whether external reports and/or interim measures are required. Among the information the Title IX Team may consider as part of their threat assessment is the following:

- The nature of the allegations in the complaint, including whether the allegations suggest physical violence, a pattern of misconduct, gender-based misconduct facilitated through the provision of drugs or alcohol, and/or gender-based misconduct against an unconscious or physically helpless individual;
- The responding party's prior record related to gender-based misconduct and/or violent behavior;
- The responding party's history, if any, of failing to comply with College protective measures and/or any judicial protective order;
- Whether the reported misconduct involved multiple respondents;
- Whether the reported misconduct involved a minor;
- Any indications that the report was made in bad faith;
- Any other aggravating circumstances or signs of predatory behavior; and/or
- Applicable law, policy, and procedure.
- Upon completion of the threat assessment, the Title IX Coordinator will make any mandated reports as required under applicable law (e.g., the Clery Act, VAWA).

A Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

#### **b. Dismissal (Mandatory and Discretionary)<sup>1</sup>**

The College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; or
- 2) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), or
- 3) The College does not have control of the Respondent; or
- 4) The conduct did not occur against a person in the United States; or
- 5) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the College.<sup>2</sup>

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<sup>1</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>2</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process (Process A) is not applicable.

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the College; or
- 3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the appropriate grievance procedure outlined below (Process A if applicable, otherwise Process B). Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor<sup>3</sup> of their choice present with them for all meetings, interviews, and hearings within the grievance process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>4</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-makers.

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<sup>3</sup> This could include an attorney, advocate, or support person. The law permits at least one Advisor for each party (witnesses are not entitled to Advisors within the process).

<sup>4</sup> "Available" means the party cannot insist on an Advisor who doesn't have time or availability to participate in the formal grievance process. Also, the Advisor cannot have a conflict of interest (as determined by the Title IX Team), such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

The College may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties. As noted above, the College does not provide a Complainant or Respondent an Advisor throughout the investigation process, but will provide an Advisor to either party for a hearing if a party does not already have an Advisor for purposes of the hearing.

#### **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 a party throughout the grievance process. The parties may choose Advisors from inside or outside of the College community when a conflict of interest is not present.

If an investigation proceeds to the hearing stage, the Title IX Coordinator will assign a trained Advisor for any party that requests one. The requesting party will be given the opportunity to choose an individual from the College's Advisor pool. The Advisor will be trained by the College and have familiarity with the College's grievance process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the grievance process, prior to a hearing.

#### **b. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

Advisors or attorneys are permitted to fully represent their advisees or clients in the grievance proceedings, including all meetings, interviews, and hearings. Although the College prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

#### **c. Advisors in Hearings/College-Appointed Advisor**

Under U.S. Department of Education's Title IX regulations, the parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed in a hearing without an Advisor. If the party's Advisor will not conduct questioning, the College will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself.

#### **d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the College's policies and procedures.

#### **f. Advisor Violations of College Policy**

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not speak on behalf of their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker except during a hearing proceeding during cross-examination of a party or witness.

The parties are expected to ask/respond to questions on their own behalf throughout the investigation phase of the grievance process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. The Title IX Coordinator will determine how to address the Advisor's non-compliance and future role (if any) in the grievance process.

#### **g. Sharing Information with the Advisor**

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor if they wish to do so.

The College also provides a consent form that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to release information to the Advisor before the College is able to share records with an Advisor.

If a party requests that all communication related to the grievance process be made through their attorney Advisor, the College will generally adhere to that request at the discretion of the Title IX Coordinator.

#### **h. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

#### **i. Expectations of an Advisor**

The College generally expects an Advisor to adjust their schedule to allow them to attend grievance process 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.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be appropriate and available.

#### **j. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **k. Assistance in Securing an Advisor**

Local resources include:

- New Day Advocacy Center, Ashland (<http://www.ndshelter.org/>)
- Domestic Violence/Sexual Assault Officer, Amy O'Donahue ([Ashland County Sheriff's Department](#))
- Center Against Sexual and Domestic Abuse – CASDA, Washburn (<https://casda.org/services/>)

National resources include:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).
- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

## **7. Informal Resolution**

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the grievance process; or
- A negotiated resolution.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **b. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the grievance process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented by the Title IX Coordinator in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.



### **c. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College. Negotiated Resolutions are not appealable. A negotiated resolution will not be pursued or utilized when a student files a formal complaint alleging sexual harassment by a College employee.

## **8. Grievance Process Roster**

The Formal Grievance Process relies on a roster of administrators (“the Roster”) to carry out the process.

### **a. Roster Member Roles**

Members of the Roster are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, non decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **b. Roster Member Training**

The Roster members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the College’s Sexual and Gender Based Misconduct Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy

- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, Advisors (who may be College employees), and Decision-makers. All Roster members are required to attend these trainings annually. The materials used to train all members of the Roster are publicly posted here: <https://www.northland.edu/campus-life/services/safety/#title-ix-sexual-respect>.

#### **d. Roster Membership**

The Roster includes:

- 2 Decision-makers, one representative from human resources and one from student affairs, who lead the hearings for allegations involving employee and student respondents, respectively.
- 8 or more employees, including at least 3 faculty members and at least 2 employees from the College's athletic department, who will be called in as investigators. Employee roster members are usually appointed to three-year terms.

Individuals who are interested in serving in this volunteer capacity are encouraged to contact the Title IX Coordinator.

### **9. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and

that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,

- A statement about the College's policy on retaliation,
- Information about the privacy of the process,
- Information on the ability for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the grievance process,
- Detail on how a party may request disability accommodations during the formal grievance process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, any alleged conflict of interest that the Investigator(s) may have to the Title IX Coordinator, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, placed in the student's campus mailbox, or emailed to the parties' College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

#### **10. Grievance Process Timeline**

The College will make a good faith effort to complete the grievance process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

#### **11. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints two investigators to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

#### **12. Ensuring Impartiality**

Any individual materially involved in the administration of the grievance process, including the Title IX Coordinator, Investigators, and Decision-makers, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigators 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 process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is valid. If the Title IX Coordinator determines a valid concern regarding a potential bias or conflict of interest is present, another Roster member will be assigned and the

impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Chief of Staff.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption 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 following a hearing.

### **13. Investigation Timeline**

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

The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **14. Delays in the Investigation Process and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (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 parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The College will communicate in writing the anticipated duration of the delay and reason(s) for it to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and grievance process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate by the Title IX Coordinator.

College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **15. Steps in the Investigation Process**

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties will have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take the following steps, *if not already completed by the Title IX Coordinator* (not necessarily in this order):

- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Identify issues and develop a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigators to ask of the other party and witnesses, and document in the investigation report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the investigation timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used in the investigation report
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices, including relevant physical or documentary evidence, will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of the investigation report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigators may elect to amend the investigation report based on the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigators will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period

- The final report will then be shared with all parties, their Advisors, and the Title IX coordinator through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

## **16. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the College are expected to cooperate with and participate in the College's investigation and grievance process. Failure of such witnesses to cooperate with and/or participate in the investigation or grievance process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. GoToMeeting, Zoom, FaceTime, Microsoft Teams, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

## **17. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of any such audio and/or video recording.

## **18. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) 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.

## **19. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing must be scheduled at least ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

## **20. Hearing Decision-maker Composition**

The College will designate a single Decision-maker. The single Decision-maker will also lead the hearing. The Decision-maker will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Roster sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Decision-maker or designee.

## **21. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker determines is relevant and credible may be considered in issuing a determination of responsibility. The Decision-maker does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence standard (i.e., whether it is more likely than not that the Respondent violated the Policy as alleged).

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Decision-maker will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker and parties to see and hear a party or witness answering questions. A request for such options must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. For compelling reasons, the Decision-maker may reschedule the hearing at the Decision-maker's sole discretion.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask of a party or witness. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one for the hearing. Each party must have an Advisor present for the hearing. There are no exceptions.
- A copy of all the materials provided to the Decision-maker about the matter, unless they have been provided already.<sup>5</sup>
- An invitation to each party to submit to the Decision-maker an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the

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<sup>5</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



timeline followed by the College and remain within the 60-90 business day goal for completion.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

### **23. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Decision-maker at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Decision-maker can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Decision-maker know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **24. Pre-Hearing Preparation**

The Decision-maker or hearing facilitator after any necessary consultation with the parties, Investigators and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigators, unless all parties and the Decision-maker assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Decision-maker do not assent to the admission of evidence newly offered at the hearing, the Decision-maker may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence and/or bar the admission of the evidence.

The parties will be given a list of the names of the Decision-maker at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review

and comment can be shared with the Decision-maker at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker.

## **25. Pre-Hearing Meetings**

The Decision-maker may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (their Advisors) wish to ask or discuss at the hearing, so that the Decision-maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Decision-maker must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Decision-maker will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigators may be argued to be relevant.

The Decision-maker 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. The Decision-maker may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded.

## **26. Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Decision-maker, the hearing facilitator/Title IX Coordinator if needed, the Investigators who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties, and will then be excused.

## **27. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and with respect to each alleged policy violation.

### **28. The Order of the Hearing – Introductions and Explanation of Procedure**

The Decision-maker explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker on the basis of bias or conflict of interest. The Decision-maker will rule on any such challenge unless the Decision-maker is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the hearing facilitator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **29. Investigator Presents the Final Investigation Report**

The Investigators will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker and the parties (through their Advisors). The Investigators will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations. The Investigator(s), Advisors, and parties will refrain from discussion of or questions about credibility assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

### **30. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision-maker upon request if agreed to by all parties and the Decision-maker), the proceeding will pause to allow the Decision-maker to consider it (and state it if it has not been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or if it must be rephrased.

The Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will then state their decision on the

question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance. The Decision-maker may consult with legal counsel on any questions of admissibility. The Decision-maker may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for bias.

### **31. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker 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.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **32. Recording Hearings**

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **33. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used in all grievance proceedings. The hearing facilitator may be invited to attend the deliberation by the Decision-maker, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, in formulating sanctions (if any) but the Decision-maker is not required to do so.

The Decision-maker will review the statements and any pertinent conduct history provided by the Dean of Students or the Title IX Coordinator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-maker will then prepare a written determination of responsibility and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **34. Notice of Outcome**

Using the determination of responsibility, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Notice of Outcome may be reviewed by legal counsel. The Title IX Coordinator will then share the Notice of Outcome, including the determination of responsibility, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-maker's determination of responsibility.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, placed in the

student's campus mailbox, and/or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **35. Statement of the Rights of the Parties (see Appendix 2)**

### **36. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

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.

## **a. Student Sanctions**

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the College. Conduct suspension will be added as a transcript notation on the student's transcript, which signifies suspension based on disciplinary matters.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events. This sanction will be noted permanently as a Social Expulsion on the student's official transcript.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including class registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

## **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment and/or retaliation may include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*

- *Reassignment*
- *Assignment to new supervisor*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

### **37. Withdrawal or Resignation While Charges Pending**

**a. Students:** Should a student decide to not participate in the grievance process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the grievance process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student.

However, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the College. Admissions and the Registrar's office will be notified that they cannot be readmitted. They may also be barred from College property and/or events.

If the student Respondent withdraws or takes a leave for a specified period of time (e.g., one semester), the grievance process may continue remotely and that student is not permitted to return to the College unless and until all sanctions have been satisfied.

**b. Employees:** Should an employee Respondent resign with unresolved allegations pending, the grievance process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the College. The employee's personnel file and the records retained by the Title IX Coordinator will reflect that status.

All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **38. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 7 business days of the delivery of the Notice of Outcome and/or dismissal of a complaint.

A single Appeal Decision-maker will Decision-maker the appeal. The Appeal Decision-maker will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.



The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-maker and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 7 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-Maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigators and/or original Decision-maker, as necessary, who will submit their responses in 7 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Decision-maker, and the Decision-maker will render a decision in no more than 7 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that

may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, placed in the student's campus mailbox, and/or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed and/or received in person, notice will be presumptively delivered.

#### **b. Sanctions Status during the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

#### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigators and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- The results of a remand to a Decision-maker cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **39. Long-Term Remedies/Other Actions**

Following the conclusion of the grievance process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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 will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

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

### **40. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

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

Failure to abide by the sanction(s)/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 College, and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **41. Recordkeeping**

The College will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on the College's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the College's education program or activity; and
  - c. 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 College will also maintain any and all records in accordance with state and federal laws.

#### **42. Disabilities Accommodations in the Grievance Process**

The College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's grievance process.

Anyone needing such accommodations or support should contact the Accommodations Office or the Human Resources Office, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **43. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the grievance process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document 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 the background state and federal laws which frame such policies and codes, generally.

These procedures are effective August 14, 2020.

**ATIXA 2020 MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES  
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*Updated 8.20.2020*

**APPENDIX 1:**  
**GRIEVANCE PROCESS FOR ALLEGED SEXUAL OR GENDER BASED VIOLATIONS DISMISSED UNDER**  
**PROCESS A (KNOWN AS PROCESS B)**

If a case does not meet the policy definition requirements of Title IX, the case may be dismissed under Process A and reopened under Process B. Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

Components 1 through 14 and components 34 through 42 of Process A are incorporated into Process B; however, Process B does not include a hearing, so components 15 through 33 do not apply. Component #15, "Steps in the Investigation Process," is replaced with the following for purposes of Process B:

**Process B: Steps in the Investigation Process**

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigators typically take the following steps, *if not already completed by the Title IX Coordinator* (not necessarily in this order):

- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated, if not already completed by the Title IX Coordinator
- Develop a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigators to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions

- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices, including relevant physical or documentary evidence, will be included
- The Investigators may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigators will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- At the conclusion of the investigation, the investigators will reach a finding as to each alleged violation based on a preponderance of the evidence standard.
- The Investigators share the report with the Title IX Coordinator for review and feedback.
- The Investigator will incorporate any relevant feedback, finalize their report and forward to the Title IX Coordinator, who will forward on to the Dean of Students or Director of Human Resources, as applicable, for a final determination.
- Sanctions for students will be determined by the Dean of Students, and for employees by the Director of Human Resources.

Refer to component 35 and forward for the remaining applicable steps in Process B.

## **APPENDIX 2: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to College officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by College officials.
- The right to have College policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by College officials from reporting sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by College law enforcement and/or other College officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a College-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:



- Relocating an on-campus student's housing to a different on-campus location
  - Assistance from College staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation) if feasible
  - Transportation accommodations
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the College's ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  - The right to ask the Investigators and Decision-maker to identify and question relevant witnesses, including expert witnesses.
  - The right to provide the Investigators/Decision-maker with a list of questions that, if deemed relevant by the Investigators/Decision-maker, may be asked of any party or witness.
  - The right not to have irrelevant prior sexual history or character admitted as evidence.
  - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  - The right to a fair opportunity to provide the Investigators with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
  - The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
  - The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.

- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the grievance process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence; to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the grievance process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the grievance process, and the procedures for doing so in accordance with the standards for appeal established by the College.
- The right to a fundamentally fair resolution as defined in these procedures.