

Sexual Misconduct Procedures (Approved by Vice President of Learner Support Services on August 14, 2020)

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL  
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## **BACKGROUND**

Title IX of the Education Amendments of 1972 (“Title IX”) is a Federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs or activity. All public and private educational institutions receiving Federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include gender-based discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation and other forms of sexual misconduct.

The Violence Against Women Act (“VAWA”) was passed in 1994 and reauthorized in 2013. Section 304 of VAWA amended Section 485(f) of the Higher Education Act and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”). In addition to enacting clarifying and technical revisions to the Clery Act, VAWA expanded crime reporting requirements to include incidents of dating violence, domestic violence, sexual assault, and stalking. VAWA also expanded policies, procedures, and programs institutions must have relating to incidents of sexual misconduct.

On June 11, 2019, the Board of Trustees of Anne Arundel Community College (“AACC” or the “College”) approved a revised Sexual Misconduct Policy (“the Policy”) and authorized the President or designee to develop and establish appropriate procedures to implement and enforce this Policy. The following Procedures are established pursuant to that Policy.

### **1. Definitions**

- *AACC or College* means Anne Arundel Community College.
- *Advisor* means a person chosen by a party or appointed by the Title IX Coordinator to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Appeal* means an application to the Appeal Officer seeking to reverse the decision of the Decision-Maker or to overturn the dismissal of a Formal Complaint or allegations within a Formal Complaint by the Title IX Coordinator.
- *Appeal Officer* means an Employee designated by the Title IX Coordinator who decides an Appeal. When the Title IX Coordinator or President believes there may be a conflict of interest or other good cause, the President or the Title IX Coordinator, with approval from the President of the College, may designate an external third party to serve as the Appeal Officer.

- *Behavioral Intervention Team (BIT)* means a group comprised of a cross-section of college personnel with expertise in the areas of student development, law enforcement, threat assessment, college operations, medical and mental health. The BIT evaluates and manages imminent threats of violence and coordinates an appropriate plan of action, which may include consulting external third parties with expertise in threat assessment. The BIT is designed to provide a coordinated referral system, a behavioral assessment process, an internal communications structure, and a comprehensive monitoring system to allow for follow-up and support. Standing membership of the BIT is comprised of staff from the following functional areas: Community Standards, Personal Counseling Services, Department of Public Safety and Policy, Faculty Human Services, Disability Support Services and Academic Advising. Additional College Employees may from time to time be designated by the BIT to serve as a resource.
- *Business Day* means a day when the College is in normal operation and does not include weekends, holidays or breaks when the College is closed, or days when the College is closed by official announcement (*i.e.*, snow days).
- *Campus Security Authorities* means Employees who have a duty to report information for the federal statistical reporting purposes under the Clery Act.
- *College community* includes, but is not limited to, students, student clubs/organizations, faculty, administrators, staff, and third parties, including guests, visitors, volunteers, invitees, vendors, contractors, campers and other participants in a College-sponsored program or activity.
- *College Property or Premises* means buildings, grounds, or property that is owned, leased, operated or controlled by the College.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct or Retaliation. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the College.
- *Confidentiality* means a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses, where the individual who receives information cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual who shared information gives written consent for its disclosure; (ii) there is a concern that the individual who shared information will likely cause serious physical harm to self or others; or

(iii) the information shared concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

- *Confidential Resource* means an Employee who is not a Mandated Reporter of Sexual Misconduct or Retaliation (irrespective of Clery Act Campus Security Authority status).
- *Decision-Maker* means an Employee designated by the Title IX Coordinator who has decision-making and sanctioning authority within the Formal Grievance Process. When the Title IX Coordinator or President believes there may be a conflict of interest or other good cause, the President or the Title IX Coordinator, with approval from the President of the College, may designate an external third party to serve as the Decision-Maker.
- *Deputy Title IX Coordinator* is an Employee designated by the College to ensure compliance with Title IX and the College's Title IX program, under the oversight of the Title IX Coordinator.
- *Education program or activity* means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the Sexual Misconduct occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- *Employee* means any individual hired by the College who is performing assigned duties and responsibilities on behalf of the College.
- *Final Determination* means a conclusion by a preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate the Policy or Procedures.
- *Finding* means a conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.
- *Formal Complaint* means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent or Retaliation against a party or other individual and requesting that the College investigate the allegations.
- *Formal Grievance Process* means a method of formal resolution designated by the College to address conduct that falls within the Procedures as detailed below, and which complies with the requirements of 34 CFR Part 106.45. The Formal Grievance Process includes, but is not limited

to, investigation of allegations, determination of whether a violation has occurred and if so, issuance of a sanction(s).

- *Investigator* means the Employee(s) designated by the Title IX Coordinator to gather facts about an alleged violation of the Procedures, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and file of directly related evidence. When the Title IX Coordinator or President believes there may be a conflict of interest or other good cause, the President or the Title IX Coordinator, with approval from the President of the College, may designate an external third party to serve as the Investigator(s).
- *Mandated Reporter* means an Employee of the College who is obligated by the Procedures to share knowledge and/or reports of Sexual Misconduct or Retaliation with the Title IX Coordinator.
- *Official with Authority* means an Employee explicitly vested with the responsibility to implement corrective measures for Sexual Misconduct or Retaliation on behalf of the College.
- *Parties* include the Complainant(s) and Respondent(s), collectively. *Party* may refer to either the Complainant(s) or Respondent(s), individually.
- *Pool* includes any Investigators, Decision-Makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case). Appeal Officers are included in the *Pool* but only those designated in the *Pool* as an Appeal Officer may perform that role.
- *Privacy* means that information related to allegations of Sexual Misconduct or Retaliation will be shared with a limited number of Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the Formal Complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s education program(s) and/or activities.
- *Report* means that an Employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of allegations of Sexual Misconduct or Retaliation.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct or Retaliation.
- *Resolution* means the result of a Formal Grievance Process.

- *Retaliation* means allegations of a materially adverse action(s) by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX and its accompanying regulations, the Policy, or the Procedures or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy or Procedures.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated the Policy or Procedures.
- *Sexual Misconduct* is the umbrella category including the offenses of gender-based discrimination, sexual harassment, sexual assault, stalking, and dating violence and domestic violence, sexual exploitation and other forms of sexual misconduct.
- *Student* is any individual who is registered for any credit, non-credit or continuing education course offered by the College for the current or a future term.
- *Title IX Coordinator* is an Employee designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Title IX Coordinator throughout the Procedures may also encompass the Deputy Title IX Coordinator or a designee of the Title IX Coordinator for specific tasks or specific Formal Complaints.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

## **2. Purpose**

AACC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from Sexual Misconduct and Retaliation. To comply with Title IX and the accompanying regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the College has developed the Policy and Procedures to provide a prompt, fair, and impartial process for those involved in an allegation of Sexual Misconduct and Retaliation. The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of the Policy and Procedures is the prohibition of Sexual Misconduct or Retaliation. Sometimes, Sexual Misconduct involves exclusion from activities, such as admission, athletics, or employment. When an alleged violation of the Policy or Procedures is reported, the allegations are subject to resolution using these Procedures.

When the Respondent is a member of the College community, this grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the College community. The Policy and Procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with these Procedures.

The Policy and Procedures apply to any allegations of Sexual Misconduct or Retaliation that fall within the scope of Title IX and supersede all prior versions of the Procedures. No other College policies or procedures will be used to respond, investigate, decide, appeal or otherwise resolve allegations of Sexual Misconduct or Retaliation that fall within the scope of Title IX, including student, employee, or faculty policies, procedures, manuals, processes or guidelines.

#### **4. Title IX Coordinator**

The Federal Compliance Officer serves as the Title IX Coordinator and oversees implementation of the College's Policy and Procedures. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent Sexual Misconduct and Retaliation prohibited by Title IX.

The Director of the Office of Community Standards serves as the Deputy Title IX Coordinator and assists the Title IX Coordinator in fulfilling the duties set forth above. If the Title IX Coordinator is unavailable, the Deputy IX Coordinator may fulfill the Title IX Coordinator's duty without needing to be specifically assigned.

The Title IX Coordinator may also assign a designee to perform specific tasks or for a specific Formal Complaint, in the Title IX Coordinator's sole discretion, so long as the designee has been appropriately trained.

#### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator oversees the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under the Policy and Procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, a party may contact the Deputy Title IX Coordinator at [ocs@aacc.edu](mailto:ocs@aacc.edu). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator. If the Title IX Coordinator is determined to have a conflict of interest or bias in a particular matter, the Deputy Title IX Coordinator will fulfill the role of the Title IX Coordinator for the specific Formal Complaint where the conflict or bias is alleged or the President may designate another Employee or external third party to serve in the role of the Title IX Coordinator.

Reports or Formal Complaints of Sexual Misconduct or Retaliation alleged to have been committed by the Title IX Coordinator should be submitted to the College President at [presidentsline@aacc.edu](mailto:presidentsline@aacc.edu). Reports or Formal Complaints of Sexual Misconduct or Retaliation committed by any other Title IX Team member should be submitted to the Title IX Coordinator.

## **6. Administrative Contact Information**

Reports or Formal Complaints of alleged Policy and Procedures violations, or inquiries about or concerns regarding the Policy and Procedures, may be made to:

Title IX Coordinator  
Student Union, Suite 2200  
101 College Parkway  
Arnold, MD 21012  
(410) 777-1239  
[complianceofficer@aacc.edu](mailto:complianceofficer@aacc.edu)

Deputy Title IX Coordinator  
Student Union, Room 209  
101 College Parkway  
Arnold, MD 21012  
(410) 777-1339  
[ocs@aacc.edu](mailto:ocs@aacc.edu)

The College has determined that the President and Vice Presidents are Officials with Authority to address and correct Sexual Misconduct and/or Retaliation. These Officials with Authority may also accept Reports or Formal Complaints on behalf of the College. Reports or Formal Complaints can be submitted to:

President  
Ludlum 233  
101 College Parkway  
Arnold, MD 21012

(410) 777-1177  
[presidentsline@aacc.edu](mailto:presidentsline@aacc.edu)

Vice President of Learner Support Services  
Ludlum 215A  
101 College Parkway, Arnold, MD 21012  
(410) 777-2256  
[vplss@aacc.edu](mailto:vplss@aacc.edu)

Vice President of Learning  
Ludlum 217A  
101 College Parkway  
Arnold, MD 21012  
(410) 777-1847  
[learning@aacc.edu](mailto:learning@aacc.edu)

Vice President of Learning Resources Management  
Ludlum 213A  
101 College Parkway  
Arnold, MD 21012  
(410) 777-2825  
[mabeardmore@aacc.edu](mailto:mabeardmore@aacc.edu)

The College has also classified certain Employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing Sexual Misconduct or Retaliation. See Section on Mandated Reporters and Appendix A for a list of the Employees the College has designated as Mandated Reporters.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: [Office of Civil Rights](#)

For complaints involving employees:

Equal Employment Opportunity Commission (EEOC)  
Baltimore Field Office  
GH Fallon Federal Building  
31 Hopkins Plaza, Suite 1432  
Baltimore, MD 21201  
Telephone: (800) 669-4000  
Facsimile: (410) 209-2221  
TTY: (800) 669-6820  
Web: <http://www.eeoc.gov>

## **7. Reports and Formal Complaints of Sexual Misconduct and/or Retaliation**

### **a. Reports**

Any individual may provide Reports of Sexual Misconduct and/or Retaliation using any of the following options:

- Report allegations in writing or verbally. Such a Report may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office address, listed for the Title IX Coordinator, Deputy Title IX Coordinator or any other Official with Authority listed, or
- Report online, using the form posted at: [Online Incident Report Form](#).

If a Report is submitted, the Title IX Coordinator will contact the Complainant, if known, to discuss whether the Complainant wishes to file a Formal Complaint and to offer supportive measures.

Anonymous Reports that do not name the reporter or protect the anonymity of the Complainant are permitted. If the name of the Complainant is not provided, the Title IX Coordinator will attempt to contact the person who made the Report to obtain the name of the Complainant; otherwise, the College's ability to investigate or respond to the Report or provide supportive measures will be limited or impossible, depending on what information is shared.

### **b. Formal Complaints**

A Formal Complaint means a document filed by the Complainant(s) or signed by the Title IX Coordinator alleging Sexual Misconduct or Retaliation by a Respondent and requesting that the College investigate the allegation(s). At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in an education program or activity of the College.

The phrase “document filed by the Complainant(s)” means a document or electronic submission (such as an email) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. The College considers a document submitted by a Complainant using the Complainant’s College-issued email addressed to be sufficient to indicate that the Complainant is the person filing the Formal Complaint.

A Formal Complaint may be filed by the Complainant with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section above.

If allegations are submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to assist the Complainant to file a Formal Complaint correctly. A Complainant may file a Formal Complaint without having to file a Report first, although the Complaint is welcome to do so.

### **8. Supportive Measures**

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged Sexual Misconduct or Retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College’s education program or activity, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter Sexual Misconduct, and/or Retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving a Report or Formal Complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that the Complainant may file a Formal Complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that the Complainant’s wishes are taken into account with respect to the supportive measures that are planned and implemented.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College’s ability to provide the supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers

- Visa and immigration assistance or resources
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Persona Non Grata orders, when authorized by law
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

### **9. Emergency Removal**

The Title IX Coordinator can act to remove a Respondent(s) entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator who may consult with the AACC Behavioral Intervention Team and/or the College's legal counsel.

In all cases in which an emergency removal is imposed, the Respondent(s) will be given notice and an opportunity to challenge the decision immediately following the removal. The Respondent(s) will be given five (5) Business Days to request a show cause meeting with the Title IX Coordinator. When a show cause meeting is not requested within five (5) Business Days of the imposition of an emergency removal, objections to the emergency removal will be deemed waived.

At the show cause meeting, the Respondent may present information as to why the emergency removal should be lifted or modified. Show cause meetings may be conducted via electronic means and may be recorded. No unauthorized audio or video recording of any kind is permitted during a show cause meeting. If the Title IX Coordinator elects to audio and/or video record the show cause meeting, all persons present at the show cause meeting must be made aware of and consent to audio and/or video recording.

This show cause meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency

removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Title IX Coordinator will draft a written summary of the basis for the emergency removal and provide a copy to the Respondent prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under these Procedures to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under the Procedures will be grounds for discipline, which may include expulsion or termination.

The College will implement the least restrictive emergency removal actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: re-assigning a student to a different section of the same course (if available); temporarily re-assigning an employee; restricting a student's or employee's access to or use of classrooms, facilities or equipment; allowing a student to withdraw or take grades of incomplete without financial penalty; authorizing an administrative leave; and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate athletics; not permitting a student organization to hold events or meetings.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

#### **10. Promptness**

All allegations are acted upon promptly by the College once it has received a Report or a Formal Complaint. Formal Complaints can take 60-90 Business Days to resolve, typically. There may be exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the Procedures will be delayed, the Title IX Coordinator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

#### **11. Privacy**

Every effort is made by the College to preserve the privacy of Reports and Formal Complaints. The College will not share the identity of any individual who has made a Report or Formal Complaint of Sexual Misconduct or Retaliation under these Procedures; any Complainant, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34

CFR Part 106, including the conducting of any investigation, hearing, or grievance process arising under the Policy and Procedures.

The College reserves the right to designate which College officials have a legitimate educational interest in being informed about incidents that fall within the Policy and Procedures, pursuant to FERPA on a case-by-case basis.

Only a small group of Employees who need to know will typically be told about the allegations in order to perform their job functions or protect the health and safety of the College community. Information will be shared as necessary with Investigators, Decision-Makers, Appeal Officers, witnesses, and the parties and their Advisors. The circle of people with this knowledge will be kept as tightly as possible to preserve the parties' rights and privacy.

The College may contact parents/guardians of individuals under the age of 18 to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

## **12. Jurisdiction of the College**

The Policy and Procedures apply to the College's education program and activities, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by College's recognized student organizations.

The Policy and Procedures can also be applicable to the effects of off-campus Sexual Misconduct or Retaliation that effectively deprive someone of access to College's education program and activities. In such instances, the College may address the effects of the off-campus misconduct through supportive measures.

Regardless of where the conduct occurred, the College will address Reports to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety to self or others;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or

- d. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events or issuing Persona No Grata orders.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers or to the Policy and Procedures, if their employer has agreed to be bound by the College's policies and procedures in their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences Sexual Misconduct or Retaliation in an externship, study abroad program, or other environment external to the College where sexual misconduct or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **13. Time Limits on Reporting**

There is no time limitation on providing Reports or Formal Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on Reports or Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy or procedures) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

### **14. Electronic Communications, Internet-Based Networks and Platforms, Websites, Social Media and Online Misconduct**

The Policy and Procedures of the College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited under this Policy and Procedures, when those behaviors occur in or have an effect on the College's education program and activities or use College networks, technology, equipment, websites or College email accounts.

While the College may not control electronic communications, Internet-based networks or platforms, websites, social media, and other venues in which Sexual Misconduct or Retaliation are made, when allegations are submitted to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from Sexual Misconduct or Retaliation in electronic communications, on Internet-based networks or platforms, on websites or social, or other online misconduct, including but not limited to, sharing inappropriate content via social networking platforms or social media, unwelcome text messaging of a sexual nature (*e.g.*, sexting), revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community. *See also* Prohibited Conduct – Sexual Exploitation.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (*e.g.*, not on College networks, technology, equipment, websites, or College email accounts) will only be subject to the Procedures when such online conduct can be shown to cause a substantial disruption in the College's education program or activities.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online, by telephone, by email or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

### **15. Sexual Misconduct**

Students and Employees are entitled to an employment and educational environment that is free of Sexual Harassment and Retaliation. The Policy and Procedures are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of the College's Policy and Procedures, though supportive measures may be offered to those impacted.

### a. Prohibited Conduct

The sections below describe the specific forms of Sexual Harassment that are prohibited under the Policy and Procedures. Acts of Sexual Misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved.

- 1) *Gender-Based Discrimination* is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived sex, gender, sexual orientation or gender identity. Gender-based discrimination does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex, gender, sexual orientation or gender identity.

The College may act to remedy gender-based discrimination when reported, whether or not the discrimination rises to the level of creating a “hostile environment.” When gender-based discrimination rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the Formal Grievance Process.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive.

- 2) *Quid Pro Quo* is defined as an Employee of conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.
- 3) *Sexual Harassment* is defined as unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity.
- 4) *Sexual Assault* includes the following:
  - i) *Sex Offenses, Forcible* is defined as any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
  - ii) *Forcible Rape* is defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

- iii) *Forcible Sodomy* is defined as oral or anal sexual intercourse with another person, forcibly, against that person's will (non-consensually), or when the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

*Sexual Assault with an Object* is defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, against that person's will (non-consensually), or when the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

*Forcible Fondling* is defined as the touching of the private body parts of another person (buttocks, groin, vagina, penis, or breasts) for the purpose of sexual gratification, forcibly, against that person's will (non-consensually), or when the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- iv) *Sex Offenses, Non-forcible* includes:

- a) *Incest* is defined as non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Maryland law.

- b) *Statutory Rape* is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent of sixteen (16) years of age (or fourteen (14) years of age if the Respondent is at least four (4) years older than the Complainant).

- 5) *Dating Violence* is defined as violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of

relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- 6) *Domestic Violence* is defined as violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Maryland, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Maryland.

For purposes of this definition, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 7) *Stalking* is defined as engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition—Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- 8) *Sexual Exploitation* is defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being

exploited, and that conduct does not otherwise constitute Sexual Misconduct under the Procedures.

Examples of Sexual Exploitation include, but are not limited to:

- i) Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person(s) being observed);
- ii) Invasion of sexual privacy;
- iii) Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography;
- iv) Prostituting another person;
- v) Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection;
- vi) Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;
- vii) Misappropriation of another person's identity on Internet-based platforms or networks, including but not limited to, apps, websites, or other venues designed for dating or sexual connections;
- viii) Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
- ix) Knowingly soliciting a minor for sexual activity;

- x) Engaging in sex trafficking; and/or
- xi) Creation, possession, or dissemination of child pornography.

#### **b. Additional Definitions**

As used in the prohibited conduct offenses above, the following definitions and understandings apply:

- 1) *Force* is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

- 2) *Coercion* is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors, such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- 3) *Consent* is knowing, voluntary, and clear permission by word or action to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each person to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses a person, that person can kiss them back (if they want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either person involved in an incident. Instead, the burden remains on the College to determine whether the Policy or Procedures have been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to bondage, discipline/dominance, submission/sadism, and masochism (“BDSM”) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy or procedures that assume non-kink relationships as a default.

- 4) *Incapacitated* means a person who cannot consent because the person is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates the Policy and Procedures if the person engages in sexual activity with someone who is incapable of giving consent.

It is a defense to an allegation of sexual assault that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard, which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (*e.g.*, to understand the “who, what, when, where, why, or how” of the sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication.

The Procedures also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

- 5) *Unwelcomeness* is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

## **16. Retaliation**

Protected activity under these Procedures includes reporting an incident that may implicate these Procedures, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of the Procedures.

It is prohibited for the College or any member of College’s community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law, policy, or procedures or because the individual has made a Report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Procedures. The exercise of rights protected under the First Amendment does not constitute Retaliation.

Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The Title IX Coordinator may offer supportive measures to individuals who claim Retaliation.

Charges against an individual for student or employee code of conduct violations that do not involve Sexual Misconduct or Retaliation but arise out of the same facts or circumstances as a Report or Formal Complaint of Sexual Misconduct or Retaliation, for the purpose of interfering with any right or privilege secured by Title IX, constitutes Retaliation and will be investigated and resolved through these Procedures.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under the Procedures does not constitute Retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any person has made a materially false statement in bad faith.

## **17. Mandated Reporting**

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected Sexual Misconduct or Retaliation. Confidential Resources may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

By contrast, Mandated Reporters must promptly share with the Title IX Coordinator all known details of the information shared with them regarding the allegations in the course of their employment. If a Complainant expects formal action in response to the Complainant's allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy or procedure violations, and these Employees will immediately notify the Title IX Coordinator (and/or police, if desired by the Complainant) of the Report or Formal Complaint.

### **a. Mandated Reporters**

Certain Employees, known as Mandated Reporters, are required to report actual or suspected Sexual Misconduct or Retaliation to the Title IX Coordinator immediately. The College has designated the Employees listed in Appendix A as Mandated Reporters.

Mandated Reporters must promptly share all details of behaviors under these Procedures that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by Mandated Reporters, unless the Complainant clearly indicates that the Complainant desires a Report to be made or a seek a specific response from the College. Supportive measures may be offered as the result of such disclosures without formal College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of Sexual Misconduct of which the Mandated Reporter becomes aware is a violation of the Policy or Procedures and can be subject to disciplinary action for the Mandated Reporter's failure to comply.

When a Mandated Reporter is engaged in Sexual Misconduct or Retaliation, the Mandated Reporter still has a duty to report their own misconduct, though the College is technically not on notice when a perpetrator is also a Mandated Reporter unless the perpetrator does, in fact, report themselves.

A Mandated Reporter who is themselves a target of Sexual Misconduct or Retaliation under the Policy or Procedures is not required to report their own experience, though they are, of course, encouraged to do so.

#### **b. Confidential Resources**

The College has designated the following as Confidential Resources:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional)

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat, danger or abuse to oneself or others when required to disclose by law or court order.

Employees who are Confidential Resources will timely submit anonymous statistical information for Clery Act purposes unless the Employee believes it would be harmful to the client or patient.

#### **c. Employees Who Are Not Mandated Reporters or Confidential Resources**

Complainants should be aware that the only Employees that are required to maintain confidentiality are those designated as Confidential Resources.

An Employee who has not been designated as a Mandated Reporter or Confidential Resource has the discretion to share information regarding allegations of Sexual Misconduct or Retaliation with the Title IX Coordinator. The Employee may discuss reporting with the Complainant or make a Report to the Title IX Coordinator, including the Complainant's name or anonymously. See Section on Reporting. The Complainant, however, will have the right to determine whether to proceed with a Formal Complaint, unless the Complainant chooses not to proceed and the Title IX Coordinator determines that there is a compelling health or safety reason to initiate a Formal Complaint.

#### **18. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, the Complainant may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a Formal Grievance Process, if in the Title IX Coordinator's discretion, there may be a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct, irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively without the Complainant's participation.

When the Title IX Coordinator executes the Formal Complaint, the Title IX Coordinator does not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of the Policy and Procedures.

When the College proceeds, the Complainant (or the Complainant's Advisor) may have as much or as little involvement in the process as the Complainant wishes. The Complainant retains all rights of a Complainant under the Policy and Procedures irrespective of the Complainant's level of participation. Typically, when the Complainant chooses not to participate, the Title IX Coordinator will appoint an Advisor to serve as proxy for the Complainant throughout the Formal Grievance Process, acting to ensure and protect the rights of the Complainant.

Note that the College's ability to remedy and respond to a Report may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality or that the College take no formal action and the circumstances allow the College to honor that request, the College will offer supportive measures and remedies to the Complainant and the community but will not otherwise pursue formal action.

If the Complainant elects for the College to take no action, the Complainant can change that decision and decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College and to have the incidents investigated and properly resolved through the Formal Grievance Process.

## **19. Federal Timely Warning Obligations**

Complainants or third parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to the College that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **20. False Allegations and Evidence**

Deliberately false and/or malicious accusations under these Procedures, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties who knowingly provide false evidence, tamper with or destroy evidence after being directed to preserve such evidence, or deliberately mislead a member of the Pool while conducting an investigation or making a determination can be subject to discipline under these Procedures.

### **21. Amnesty for Complainants and Witnesses**

The College community encourages Complainants and witnesses to report Sexual Misconduct and/or Retaliation. Sometimes, Complainants or witnesses are hesitant to make a Report or Formal Complaint to the College or participate in grievance processes because they fear that they themselves may be in violation of certain policies (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced Sexual Misconduct to the Department of Public Safety and Police or the Health and Wellness Center). Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report violations of the Policy and Procedures to the College, that witnesses come forward to share what they know, and that all parties and witnesses be forthcoming during the process.

To encourage reporting and participation in the process, the Procedures offer parties and witnesses amnesty from policy and procedure violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident. The College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need, make Reports or participate in the grievance process.

Amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender. The Title IX Coordinator will make decisions regarding whether to amnesty can be offered based on the facts and circumstances.

## **22. Federal Statistical Reporting Obligations**

The College has designated the Employees listed in Appendix A as Campus Security Authorities. Campus Security Authorities have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040 (“VAWA”)-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the Public Safety and Police Department regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

## **FORMAL GRIEVANCE PROCESS FOR ALLEGED VIOLATIONS OF THE SEXUAL MISCONDUCT POLICY AND PROCEDURES**

### **1. Overview**

The College will act on any Formal Complaint or Report of violation of the Policy and Procedures that is received by the Title IX Coordinator or any other Official with Authority by applying this Formal Grievance Process. If an Official with Authority receives a Formal Complaint or Report, the Official with Authority will submit the Formal Complaint or Report to the Title IX Coordinator as soon as practicable.

- a. If a Complainant wishes to submit a Formal Complaint or Report against the Title IX Coordinator, the Complainant may submit the Formal Complaint or Report to an Official with Authority, who will request that the President designate an Employee or external third party to serve as the Title IX Coordinator for purposes of these Procedures.
- b. If a Complainant wishes to submit a Formal Complaint or Report against the President, the Complainant may submit the Formal Complaint or Report to the Title IX Coordinator or an Official with Authority. In such circumstances, the Title IX Coordinator will submit the Formal Complaint to the Chair of the Board of Trustees, who will designate an external third party to serve as the Title IX Coordinator, the Investigator, and the Decision-Maker for purposes of this Process. The Chair of the Board of Trustees may serve as the Appeal Officer or may designate an external third party to serve as the Appeal Officer.

This process applies **only** to allegations of Sexual Harassment or Retaliation that are within the scope of Title IX (as defined above) involving members of the College community.

These Procedures may be used to address collateral misconduct (*e.g.*, vandalism, physical abuse of another) arising from the investigation of or occurring in conjunction with reported misconduct that is within the scope of Title IX. All other allegations of misconduct unrelated to incidents within the scope of Title IX will be addressed through the applicable College procedures.

### **2. Receipt of Formal Complaint or Report**

Upon receipt of a Formal Complaint or Report to the Title IX Coordinator of an alleged violation of the Policy and Procedures, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps the College needs to take (“Initial Assessment”).

### **3. Initial Assessment**

Following receipt of a Report or a Formal Complaint of an alleged violation of the Policy and Procedures, the Title IX Coordinator engages in an Initial Assessment, which is typically one (1) to five (5) Business Days in duration.

### **a. Process for Initial Assessment**

The steps in an Initial Assessment include:

1. If a Report is made, the Title IX Coordinator will seek to determine if the Complainant wishes to make a Formal Complaint and will assist the Complainant to do so, if desired.
2. If the Complainant does not wish to file a Formal Complaint, the Title IX Coordinator will conduct an assessment to determine if there is a compelling threat to health or safety. If the Title IX Coordinator find as compelling threat, the Title IX Coordinator will draft and sign a Formal Complaint.
3. If a Formal Complaint is received, the Title IX Coordinator will assess the sufficiency of the Formal Complaint and work with the Complainant to make sure the Formal Complaint is complete.
4. The Title IX Coordinator will reach out to the Complainant to offer supportive measures.
5. The Title IX Coordinator will inform the Complainant of the Complainant's right to have an Advisor.
6. The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers pursue a supportive and remedial response or pursue the Formal Grievance Process, which includes an investigation and a hearing.
  - i. If the Complainant prefers to pursue a supportive and remedial response, the Title IX Coordinator will work with the Complainant to identify the Complainant's wishes and facilitate implementation.
    - a) The Title IX Coordinator will request that the Complainant complete a form, stating that the Complainant does not wish for the College to take further action at this time and that the Complainant has been informed of the right to elect to initiate the Formal Grievance Process at a later time, if desired.
    - b) The Formal Grievance Process will not be initiated, and the Title IX Coordinator will administratively close the Complainant's Formal Complaint. The Formal Complaint may be reopened at any time, if requested by the Complainant.

- ii. If the Complainant wishes to pursue the Formal Grievance Process, the Title IX Coordinator will determine whether there are grounds for dismissal of all or part of the Formal Complaint. See Section on Dismissal.
  - a) If there are no grounds for dismissal, the Title IX Coordinator will initiate the Formal Grievance Process.
  - b) Based on the nature of the Formal Complaint, direct the investigation to address:
    - 1) an incident, and/or
    - 2) a pattern of alleged misconduct, and/or
    - 3) a culture/climate issue.

**c. Dismissal**

1. The Title IX Coordinator must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
  - i. The conduct alleged in the Formal Complaint would not constitute Sexual Misconduct or Retaliation within the scope of Title IX, even if proved;
  - ii. The conduct alleged did not occur in an education program or activity controlled by the College (including buildings or property controlled by recognized student organizations);
  - iii. The College does not have control of the Respondent;
  - iv. The conduct did not occur against a person in the United States; and/or
  - v. 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.
2. The Title IX Coordinator may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:
  - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
  - ii. The Respondent is no longer enrolled in or employed by the College; or

- iii. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
3. If some allegations, if proved, would constitute Sexual Misconduct or Retaliation and others would not, the Title IX Coordinator will determine if the alleged misconduct arises out of the same facts and circumstances.
  - i. If so, the Title IX Coordinator will permit the additional allegations to be investigated and resolved through the Formal Grievance Process with the allegations of Sexual Misconduct or Retaliation.
  - ii. If the allegations do not arise out of the same facts and circumstances, the Title IX Coordinator may dismiss the allegations that would not constitute Sexual Misconduct or Retaliation, if proven, and initiate a Formal Grievance Process on the Title IX allegations only. Prior to dismissal, the Title IX Coordinator will assess which policies and procedures, if any, may apply and refer the matter to the appropriate department or employee for resolution.
4. Dismissing a Formal Complaint under Title IX is procedural in nature and does not limit the College's authority to address the allegations in a Formal Complaint with an appropriate process and remedies.
5. Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
6. This dismissal decision is appealable by any party under the Procedures set forth below. *See Section on Appeals.*
7. The Complainant who voluntarily requested to withdraw a Formal Complaint or part of a Formal Complaint may refile the Formal Complaint at any time, and the Title IX Coordinator will initiate these procedures at the Initial Assessment stage.

#### **4. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the Formal 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.

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 Decision-Maker.

#### **a. Who Can Serve as an Advisor**

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

1. To find an Advisor, Complainants may wish to contact organizations such as:
  - [The Victim Rights Law Center](#)
  - The [National Center for Victims of Crime](#) (which maintains the Crime Victim's Bar Association), or
  - The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>.
2. To find an Advisor, Respondents may wish to contact organizations such as:
  - [FACE](#) or
  - [SAVE](#)

Any party who was enrolled as a student at the time of the incident alleged in the Formal Complaint is authorized to access counsel paid for by the Maryland Higher Education Commission ("MHEC") as the party's Advisor. To request an Advisor through MHEC, parties may visit: [MHEC Title IX Request and Advisor](#) or send an email to: [TitleIXproceedings.mhec@maryland.gov](mailto:TitleIXproceedings.mhec@maryland.gov).

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If a party chooses to have an Advisor assigned by the Title IX Coordinator, the Advisor will be trained by the College and be familiar with the College's resolution process. If the parties choose their own Advisor, 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 Formal Grievance Process, prior to a hearing.

Any party may also have a personal supporter present at any meeting, interview or hearing during the Formal Grievance Process. No party may have more than two (2) people present at any meeting, interview or hearing, one of which is the party's Advisor.

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

The College is required to permit cross-examination of the Investigator(s), parties and witnesses during the hearing. Cross-examination may only be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine 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 cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed during a hearing without an Advisor. If the party's Advisor will not conduct cross-examination, 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. The Decision-Maker may also question the parties and witnesses during the hearing.

### **c. Advisor's Role**

The parties may be accompanied by their Advisor in all meetings, interviews and hearings at which the party is entitled to be present, including intake and interviews. Advisors may help the parties prepare for each meeting and 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.

### **d. Advisor Violations of College Policy and Procedures**

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 speak (*e.g.*, asking procedural questions). The Advisor may not make a presentation or represent the party during any meeting or proceeding and may not speak on behalf of the party to the Investigator(s) or Decision-Maker except during a hearing proceeding during cross-examination.

The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of the parties, the Advisor may consult with the party, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. Advisors may not consult with the party during questioning of the party at a hearing, including during breaks in the hearing if the party will return for more questioning after the break.

Any Advisor who oversteps their role as defined by this process 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. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**e. 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 or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

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 a release of information to the Advisor before College is able to share records directly with an Advisor.

If a party requests that all communication be made through the party's Advisor, the College will comply with that request but will continue to copy the party on all correspondence related to the Formal Complaint.

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

Advisors are expected to maintain the privacy of the records shared with them.

**g. Expectations of an Advisor**

The College generally expects an Advisor to adjust their schedule to allow them to attend College 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 convenient and available.

**h. 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 Title IX Coordinator 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 consent form to release information to the new Advisor must be submitted.

If a party who had an Advisor appointed notifies the Title IX Coordinator that the party has chosen a different Advisor prior to the hearing, the appointed Advisor will not attend the hearing and the Advisor chosen by the party will be permitted to attend.

## **5. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with the Procedures. While there is an expectation of privacy around what an Investigator(s) shares with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose.

## **6. Grievance Process Pool**

The Procedures and this Process are distributed annually to all students, employees, prospective students, and prospective employees, which includes the members of the Pool. Members of the Pool who can serve as Investigators, Decision-Makers or Advisors include the following administrative positions:

- Director of Community Standards
- Selected administrators from President's Cabinet

Members of the Pool who may serve as Appeal Officers include the following administrative positions:

- President
- Vice President, Learner Support Services
- Vice President, Learning
- Vice President, Learning Resources Management

When the Title IX Coordinator believes there may be a conflict of interest or other good cause, the Title IX Coordinator may designate an external third party to serve as the Investigator, Advisor, Decision-Maker or Appeal Officer, with approval from the President of the College.

### **a. Pool Member Roles**

The Title IX Coordinator may appoint members of the Pool to serve any of the roles set forth above, as long as the member has been trained to serve in that role.

#### **b. Pool Member Training**

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of the College's Sexual 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 forms of Sexual Misconduct and the definition of Retaliation;
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently and impartially;
- How to conduct an investigation and grievance process, including hearings;
- 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 draft a decision that fairly summarizes the findings and conclusions of the Decision-Maker; and
- How to determine appropriate sanctions in reference to all forms of Sexual Misconduct or Retaliation allegations

Specific training is also provided for Appeal Officers and the Title IX Coordinator and designees. Pool members are required to attend these trainings annually. The materials used to train all members of the Pool will be publicly posted.

## **7. 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 will 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 and procedures implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions that could result;
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a violation of the Policy or Procedures by a preponderance of evidence;
- A statement that determinations of responsibility are made at the conclusion of the Formal Grievance Process;
- A statement that all 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 and Procedures on Retaliation;
- Information about the privacy of the process;
- Information on the need for each party to have an Advisor of their choosing;
- A statement informing the parties that the Policy and Procedures prohibit knowingly making false statements, including knowingly submitting false information during the resolution process;
- A statement informing the parties on how they may request disability accommodations during the resolution process;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest or bias that the Investigator(s) may have; 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, mailed to the mailing or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email accounts. In rare circumstances where the College has suspended access to a Respondent's College-issued email account, the College may send notices to the Respondent's non-College email address. In such cases, the College will also mail a copy to the Respondent's mailing or permanent address. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **8. Resolution Timeline**

The College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) Business Day time period, including Appeal, which can be extended as necessary for appropriate cause 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.

## **9. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint a Pool member(s) to conduct the investigation, usually within two (2) Business Days of determining that an investigation should proceed.

## **10. Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), Decision-Maker, and Appeal Officer (if any) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

Before assigning an Investigator(s), the Title IX Coordinator ask potential Investigator(s) whether there are any actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If the Investigator or a party raises a concern, another Pool member will be assigned. The Title IX Coordinator, in the Title IX Coordinator's sole discretion, may appoint an external third party as an Investigator(s), with approval from the President. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President or designee.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy or procedure violation and evidence that supports that the Respondent did not engage in a policy or procedure 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 violation of the Policy or Procedures by a preponderance of evidence.

### **11. Investigation Timeline**

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

### **12. 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 to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

College action(s) 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.

### **13. 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.

### **a. Initial Investigation**

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

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing an investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
- Amend the NOIA with any additional allegations discovered during the investigation;
- Interview the Complainant, Respondent and witnesses identified by the parties;
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes 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 Investigator(s) 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 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 and include Appendices containing all relevant physical or documentary evidence that was collected by the Investigator(s);
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no analysis, and render no recommendations as part of the investigation report;
- Share the draft investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback prior to submission of the draft investigation report to the parties;
- Redact information that is not directly related to the allegations, not relevant to the allegations, is privileged or is a party's treatment records for which the party has not given consent to disclose; and
- Provide the Title IX Coordinator with the draft investigation report to send to the parties and their Advisors.

### **b. Non-Disclosure Agreement**

Prior to the submission of the draft investigation report to the parties and their Advisors, the Title IX Coordinator will require that each parties and their Advisor, if any, sign a non-disclosure agreement (“NDA”) that provides that the party or Advisor will not to disseminate the draft or final investigation report or any of the evidence included with the investigation report or use such evidence for any purpose unrelated to the Title IX grievance process. The NDA will not restrict the parties’ ability to discuss the allegations; however, the parties and Advisors will not be permitted to disclose the draft or final investigation report or the evidence collected during the investigation.

### **c. Draft Investigation Report**

The Title IX Coordinator will send the draft investigation report, a copy of the evidence included in the investigation report by the Investigator and any evidence that was collected by the Investigator but was not included in the investigation report simultaneously to all parties, who have submitted a signed NDA, This information will be sent through secure electronic transmission or by hard copy. If the party has consented to submitting investigation reports to the party’s Advisor and the Advisor has submitted a signed NDA, the Title IX Coordinator will also send this information to the Advisor.

The Parties will be given 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 (10) Business Days in writing. The parties should submit their comments and any additional evidence, names of witnesses or questions for witnesses directly to the Investigator(s).

### **d. Additional Investigation and Final Investigation Report**

After review and comment period has expired, the Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Share the responses between the parties for additional responses or conduct additional interviews;
- Incorporate relevant elements of the parties’ written responses into the final investigation report, include any additional relevant evidence, witness interviews, any other revisions or corrections, and finalize the investigation report;
- Document all rationales for any changes made to the investigation report after the review and comment period;
- Share the final investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback prior to submission of the final investigation report to the parties; and

- Incorporate any relevant feedback, finalize the investigation report and submit it to the Title IX Coordinator.

The Title IX Coordinator will send the final investigation report, a copy of the evidence included in the investigation report by the Investigator and any evidence that was collected by the Investigator but was not included in the investigation report simultaneously to all parties, who have submitted a signed NDA, This information will be sent through secure electronic transmission or by hard copy. If the party has consented to submitting investigation reports to the party's Advisor and the Advisor has submitted a signed NDA, the Title IX Coordinator will also send this information to the Advisor.

#### **14. 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 resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of these Procedures and may warrant discipline.

The parties and witnesses may be interviewed in-person, by telephone or through electronic means, such as via Skype, Zoom, FaceTime, WebEx, or similar technologies. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), 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 or witness testimony newly offered at the hearing, the Decision-Maker will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence or witness testimony.

#### **15. Recording of Interviews**

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

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

The Investigator(s) will not include information about the following in their investigation report: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) 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; 4) the parties' prior sexual history with an individual other than the Complainant or Respondent, except to prove the source of injury, prove prior sexual misconduct, support a claim that a party has an ulterior motive, or impeach a party's credibility after that party has put their own sexual conduct at issue; and 5) a party's history of mental health counseling, treatment or diagnosis, unless the party consents.

### **17. Referral for Hearing**

Once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

### **18. Decision-Maker**

The Title IX Coordinator will select an appropriate Decision-Maker from the Pool. Upon confirming availability to serve as the Decision-Maker, the Title IX Coordinator will send a copy of the final investigation report and evidence included by the Investigator(s) in the investigation report to the Decision-Maker.

The Decision-Maker will not have had any previous involvement with the investigation. Those who have served as Investigators will be witnesses in the hearing and may not serve as a Decision-Maker. Those who are serving as Advisors for any party may not serve as the Decision-Maker 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. An administrative facilitator assists in handling the logistics for the parties, witnesses and Advisors, recording and/or virtual conferencing technology, providing for parties and Advisors to access the evidence during the hearing, timing opening and closing statements, and other administrative tasks requested by the Decision-Maker. The hearing will convene at a date and time determined by the Title IX Coordinator.

The hearing must take place at least ten (10) Business Days after the date that the final investigation report and evidence was sent to the parties—unless all parties and the Decision-Maker agree to an expedited timeline in writing.

### **19. Notice of Hearing**

At least ten (10) Business Days prior to the hearing, the Title IX Coordinator will send notice of the hearing ("Hearing Notice") to the parties, the Decision-Maker and the Investigator(s). Once mailed, emailed, and/or given in-person, notice will be presumptively delivered.

The Hearing Notice will contain:

- A description of the alleged violation(s), a list of all policies and procedures allegedly violated, a link to the applicable procedures and processes, and a statement of the potential sanctions/responsive actions that could result;
- The time, date, and location of the pre-hearing conference and a reminder that attendance is mandatory, superseding all other campus activities;
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities;
- 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, unless there are compelling reasons to reschedule the hearing, as determined by the Decision-Maker;
- Any technology that will be used to facilitate the hearing;
- A statement that the parties have the option for have the parties located in separate rooms during the using technology that enables the Decision-Maker and parties to see and hear a party or witness answering questions and must notify the Title IX Coordinator of the desire to be located in different rooms within three (3) Business Days after the Hearing Notice is sent;
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing;
- The names of the Decision-Maker, the parties, the Investigator(s), the witnesses included in the final investigation report, and if the Title IX Coordinator or legal counsel for the College will attend the hearing, their names;
- An invitation to object to any Decision-Maker on the basis of demonstrated bias and that any objections must be raised with the Title IX Coordinator within three (3) Business Days after the Hearing Notice is sent;
- 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;
- A statement that each party must have an Advisor present at the hearing and that there are no exceptions;
- A statement that parties must notify the Title IX Coordinator of the name of their Advisor within three (3) Business Days of the Hearing Notice being sent and that if a party does not provide the name of an Advisor within this timeframe, the Title IX Coordinator will appoint one;
- A statement that the final investigation report and evidence included in the investigation report by the Investigator has been provided to Decision-Maker;
- Notification that the parties must submit a witness list, topics for questioning at the hearing, and objections to evidence or witnesses prior to the pre-hearing conference;
- A statement that witnesses that were not interviewed and evidence that was not provided during the investigation will not be permitted at the hearing, unless both parties and the Decision-Maker assent;

- Notification that the parties are responsible for arranging for witnesses they intend to call to testify at the hearing; and
- 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 within three (3) Business Days of the Hearing Notice being sent.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy and Procedures) 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 resolution timeline followed by the College and remain within the 60-90 Business Day goal for resolution.

The College may place a hold on graduation, registration for courses, and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under the Policy and Procedures is not in good standing to graduate.

## **20. Pre-Hearing Conference Preparation**

No later than three (3) Business Days after the Hearing Notice is sent to the parties, the parties must submit the following to the Title IX Coordinator in writing:

- 1) The name of the party's Advisor who will attend the hearing and question the witnesses;
- 2) Any objections to the Decision-Maker on the basis of conflict of interest or bias, including the rationale of the objection;
- 3) Any request for the party, the party's Advisor or the party's witness(es) to attend the hearing or pre-hearing conference (witnesses do not attend the pre-hearing conference) remotely or have the parties located in separate rooms during the hearing; and/or
- 4) Any request for disability accommodations, language assistance and/or interpretation services at the hearing or pre-hearing conference.

### **a. Advisors**

If a party does not provide the name of an Advisor by the deadline, the Title IX Coordinator will appoint an Advisor for the party.

### **b. Objections to the Decision-Maker**

A Decision-Maker will only be removed and replaced if the Title IX Coordinator concludes that the objection raised by a party shows that the Decision-Maker has a bias or conflict of interest that precludes an impartial hearing of the allegation(s).

A Decision-Maker may also recuse themselves if they believe they have a bias or conflict of interest that would limit their ability to hold an impartial hearing of the allegation(s) by notifying the Title IX Coordinator as soon as possible.

If the Decision-Maker is replaced by the Title IX Coordinator, the Title IX Coordinator will provide notice of the name of the new Decision-Maker to the parties in writing and the parties will be given three (3) Business Days to object in accordance with these Procedures.

**c. Attending the Hearing Remotely or in Separate Rooms**

If a party requests to attend remotely or seeking to have the parties located in separate rooms, the Title IX Coordinator will arrange to use technology to allow remote testimony without compromising the fairness of the hearing. The technology used must enable the Decision-Maker and parties to see and hear a party or witness answering questions.

If requested by the party, remote options may be provided for the party's Advisor or witnesses who cannot appear in person.

**d. Disability Accommodations, Language Assistance and Interpretation Services**

Upon request, the Title IX Coordinator will work with Disability Support Services, Human Resources or other appropriate offices or department to make arrangements for disability accommodations, language assistance and interpretation services at the hearing or pre-hearing conference.

**21. Witness and Evidence Lists, Topics for Questioning and Objections**

During the ten (10) Business Day period prior to the hearing, the parties have the opportunity for continued review on the final investigation report and available evidence. The parties or their Advisors may object to the investigation report, witnesses or evidence at the pre-hearing conference or at the hearing.

Prior to the pre-hearing conference, the parties or their Advisors must submit a written list of witness and evidence that they intend to rely on at the hearing, topics for questioning at the hearing, and objections to the relevance of evidence or witnesses included with the final investigation report to the Decision-Maker. The list of objections may also include a list of evidence collected during the

investigation but not included in the final investigation report that the parties seek to introduce at the hearing. The parties must state the reasons for each objection.

The Decision-Maker will provide a copy to the other party and their Advisor and the Title IX Coordinator.

## **22. Pre-Hearing Conference**

The Decision-Maker will convene a pre-hearing conference with all parties on the date set forth in the Hearing Notice. If the party has an Advisor, the Advisor may also attend. Pre-hearing conferences will be held by telephone or through electronic means and may be recorded in the discretion of the Decision-Maker. No unauthorized audio or video recording of any kind is permitted during pre-hearing conferences. If the Decision-Maker elects to audio and/or video record the pre-hearing conference, all involved parties must be made aware of and consent to audio and/or video recording.

The Decision-Maker may ask legal counsel and/or the Title IX Coordinator to attend the pre-hearing conference.

The purpose of the pre-hearing conference is for the Decision-Maker to rule on relevance issues raised by the parties ahead of time to avoid any improper evidentiary introduction in the hearing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing or making objections at the hearing.

At the pre-hearing conference, the Decision-Maker will give each party or their Advisor an opportunity to explain their objections to the relevance of the witnesses, topics or evidence. The Decision-Maker will give the other party or their Advisor an opportunity to respond. The Decision-Maker will try to facilitate agreements regarding the admissibility of witnesses and evidence.

At least two (2) Business Days prior to the hearing, the Decision-Maker will share a draft of the written decision on the objections, rationale for any exclusion or inclusion of witnesses, topics or evidence and any agreements that were reached at the conference to the Title IX Coordinator and/or legal counsel. The Title IX Coordinator must provide the written decision to the parties at least one (1) Business Day prior to the hearing.

## **23. Hearing Procedures**

At the hearing, the Decision-Maker has the authority to hear and make determinations on all allegations of Sexual Misconduct and/or Retaliation and may also hear and make determinations on any additional alleged policy and procedure violations that arise out of the same facts and circumstances, even though those collateral allegations may not specifically fall within the scope of the Policy and Procedures.

The Decision-Maker will answer all questions of hearing procedure. The Decision-Maker may consult privately with legal counsel or the Title IX Coordinator, as needed.

Anyone appearing at the hearing to provide information, including Investigator(s), parties and witnesses, will respond to questions on their own behalf.

The Decision-Maker will allow witnesses who have relevant information to appear during the portion of the hearing when they are being questioned and will, then, be excused by the Decision-Maker.

Witnesses will not be permitted to be present at the hearing during the testimony of the parties or other witnesses.

Any evidence that the Decision-Maker determines is relevant and credible may be considered. The Decision-Maker will not consider the following to be relevant: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) 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; 4) the parties' prior sexual history with an individual other than the Complainant or Respondent, except to prove the source of injury, prove prior sexual misconduct, support a claim that a party has an ulterior motive, or impeach a party's credibility after that party has put their own sexual conduct at issue; and 5) a party's history of mental health counseling, treatment or diagnosis, unless the party consents.

Previous disciplinary action of any kind involving the Respondent may not be used to determine responsibility and may only be considered in determining an appropriate sanction after a determination of responsibility has been made.

After post-hearing deliberation, the Decision-Maker will render a written determination based on a preponderance of the evidence (*i.e.*, whether it is more likely than not that the Respondent violated the Policy and Procedures as alleged).

#### **24. Joint Hearings**

In hearings involving more than one (1) 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 with respect to each alleged

policy and procedure violation.

## **25. The Order of the Hearing**

The Decision-Maker will begin by stating that the hearing is being recorded and that by continuing to participate in the hearing, the parties and their Advisors are consenting to the recording. The Decision-Maker will state that no other recording of the hearing is permitted. The Decision-Maker will have everyone present at the hearing state their names on the record.

The Decision-Maker will explain the process. Each party's Advisor will be permitted to make an opening statement; the Investigator(s) will present their final investigation report and be subject to questioning; the party's Advisors will present evidence and question witnesses, who will be subject to cross-examination by the other party's Advisor; each party's Advisor will be permitted to make a closing argument; and then, the hearing will be closed and the Decision-Maker will deliberate.

## **26. Opening Statements**

Each party's Advisor will be permitted to give an opening statement. The Decision-Maker will invite the Complainant's Advisor to give an opening statement first. Then, the Decision-Maker will invite the Respondent's Advisor to give an opening statement. If there is more than one Complainant or Respondent, the Decision-Maker will determine the order, which will be used throughout the hearing. Each party's Advisor, regardless of how many Complainants and Respondents are joined in the hearing, will be given no more than ten (10) minutes for their opening statement.

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

After opening statements, the Decision-Maker will invite the Investigator(s) to 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 parties' Advisors. The Decision-Maker may ask questions at any time during the testimony of the Investigator(s). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties' Advisors nor the Decision-Maker should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigator(s), Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-Maker will disregard such information.

## **28. Testimony and Questioning**

Once the Investigator(s) present their final investigation report and are questioned, the Advisor for the parties will be permitted to present evidence and call witnesses, including the parties. The parties are

not required to testify. Witnesses are permitted to attend only for their testimony. When witnesses enter the hearing, the Decision-Maker will state that the hearing is being recorded and that by participating in the hearing, the witness is consenting to the recording. When the witness' testimony is complete, the witness will be excused from the hearing and asked not to disclose any of the matters discussed during the hearing.

The Advisor for the Complainant(s) may present information and call witnesses. The Advisor for the Complainant(s) may ask questions of the witnesses. The Advisor for the Respondent(s) may follow-up with any questions ("cross-examination").

The Advisor for the Respondent(s) may present information and call witnesses. The Advisor for the Complainant(s) may follow-up with cross-examination questions.

The Decision-Maker may ask questions at any time during witness testimony.

If the Decision-Maker has any follow up questions for the Investigator(s), the parties or any of the witnesses who testified, the Decision-Maker may request for the witness to rejoin the meeting to take more testimony.

All questions are subject to a relevance determination by the Decision-Maker. Advisors may make objections on the basis of relevance to the questions being asked of the Investigator(s), parties or witnesses. If an objection is made, the witness will not answer, and the Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-Maker may permit the other party's Advisor to make arguments regarding relevance before ruling on the question. The Decision-Maker will then state their decision on the question for the record and advise the Investigator/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, subject to any appeal. The Decision-Maker may consult with legal counsel on any objections. Once the Decision-Maker renders a ruling on a question, the Advisor may not make further arguments related to the 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.

## **29. 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 hearing, or they attend but refuse to participate in questioning, then the Decision-Maker may not consider or 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. 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 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. If the Decision-Maker determines that a party's Advisor has not complied with the College's rules of decorum and the Advisor needs to be replaced, the Decision-Maker will postpone the hearing to another date to give the new Advisor time to prepare; however, the delay will not be unreasonable.

### **30. Closing Arguments**

Each party's Advisor may make a summary closing argument. Advisors may refer to any evidence that was not excluded by the Decision-Maker and any testimony or prior statements included in the final investigation report by any witness or party that testified at the hearing and was subject to cross-examination. Advisors may not refer to evidence that was excluded or testimony or prior statements from any witness or party that did not testify at the hearing and was subject to cross-examination.

The Advisor of Complainant(s) will give the closing argument first, followed by the Advisor of the Respondent(s). Each party's Advisor, regardless of how many Complainants and Respondents are joined in the hearing, will be given no more than ten (10) minutes for their closing argument.

The Decision-Maker will then close the hearing, cease recording and retire to deliberate in private.

### **31. Deliberation, Decision, and Standard of Proof**

The Decision-Maker will deliberate to determine whether the Respondent is responsible or not responsible for the policy and procedure violation(s) in question. The preponderance of the evidence

standard of proof is used. If the Decision-Maker determines that the Respondent(s) is responsible for one (1) or more of the allegations, the Decision-Maker will request that the Title IX Coordinator provide a copy of any pertinent prior disciplinary records to the Decision-Maker for purposes of sanctioning.

The Decision-Maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence relied on, credibility assessments, and any sanctions, if the Respondent(s) was found responsible.

The deliberation statement must be submitted to the Title IX Coordinator within three (3) Business Days of the end of hearing, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **32. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-Maker to prepare a Notice of Outcome. The Notice of Outcome will then be reviewed by the College's legal counsel.

The Notice of Outcome will be sent to the parties and the parties' Advisors simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email. In rare circumstances where the College has suspended access to a Respondent's College-issued email account, the College may send notices to the Respondent's non-College email address. In such cases, the College will also mail a copy to the Respondent's mailing or permanent address. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy and procedures reported to have been violated, including the relevant policy and procedure section(s), and will contain a description of the procedural steps taken by the College from the receipt of the Formal Complaint to the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearing(s) held.

The Notice of Outcome will specify the finding on each alleged policy or procedure violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy or procedure 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 state that the decision is final, unless appealed, and will include the relevant appeal procedures.

### **33. 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(s), 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.

### **34. Sanctions**

Factors considered when determining a sanction(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous findings of responsibility against the Respondent for similar conduct;
- The need for sanctions to bring an end to the Sexual Misconduct and/or Retaliation;
- The need for sanctions to prevent the future recurrence of Sexual Misconduct and/or Retaliation;
- The need to remedy the effects of the Sexual Misconduct and/or Retaliation on the Complainant and the community;
- The impact on the parties; and/or
- Any other information deemed relevant by the Decision-Maker.

The sanction(s) will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the time to appeal without an appeal being requested.

The sanction(s) described in the Policy and Procedures 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:

- *Written Reprimand*: 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;
- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects;
- *Required Training or Education*: A mandate to engage in either College-sponsored or external training or education to better comprehend the misconduct and its effects;
- *Probation*: A disciplinary status, set forth in the student's record, 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 College 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;
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events;
- *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 if the student has an allegation pending or 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 violation of the College's Sexual Misconduct Policy and Procedures 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 College registration) for a specified period of time; and/or
- *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**

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

- *Verbal or Written Reprimand*: A formal statement that the misconduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions;
- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects;
- *Required Training or Education*: A mandate to engage in either College-sponsored or external training or education to better comprehend the misconduct and its effects;
- *Probation*: A disciplinary status, set forth in the employee's record, providing for more severe

disciplinary sanctions in the event that the employee 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 College activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate;

- *Loss of Oversight or Supervisory Responsibility:* A removal of job duties related to direct oversight or supervisor over other College employees, which may result in a reduction in salary and/or benefits;
- *Demotion:* A reduction in an employee's rank or job title within the College's hierarchy, which may result in a reduction in salary and/or benefits as well as loss of other privileges associated with a higher rank or title;
- *Suspension with pay:* Paid time away from the College for a definite period of time and/or until specific criteria are met;
- *Suspension without pay:* Unpaid time away from the College for a definite period of time and/or until specific criteria are met;
- *Termination:* Permanent dismissal of the employee from the College and revocation of rights to be on campus for any reason or to attend College-sponsored events; and/or
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

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

#### **a. Students**

If a student has an allegation pending for violation of the Policy and Procedures, the College may place a hold on a student's ability to complete a course, graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the Formal Grievance Process will proceed absent their participation to a resolution. Should a student Respondent permanently withdraw from the College, the resolution 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, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Misconduct and/or Retaliation. The student who withdraws or leaves while the process is pending may not return to the College. Such exclusion applies to all campuses and off site locations of College. A hold will be placed on their ability to be readmitted. They may also be barred from College property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (*e.g.*, one semester or term), the resolution process may continue remotely or may continue at the time that the Respondent seeks to enroll in courses at the College.

#### **b. Employees**

Should an employee Respondent resign with unresolved allegations pending, the resolution process may be suspended, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged Sexual Misconduct and/or Retaliation.

The Employee who resigns with unresolved allegations pending is not eligible for rehire with the College or any campus or off site location of the College, and the records retained by the Title IX Coordinator and Human Resources will reflect that status.

### **36. Appeals**

Any party or the party's Advisor on behalf of the party ("Appealing Party") may file a request for appeal by submitting a written Request for Appeal to the Title IX Coordinator within five (5) Business Days of the Notice of Outcome having been sent to the parties.

The Title IX Coordinator will appoint a single Appeal Officer to decide the appeal. The Appeal Officer may not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Title IX Coordinator will forward the Request for Appeal to the Appeal Officer for consideration to determine if the request meets the grounds for appeal ("Review for Standing").

The Review for Standing is not a review of the merits of the appeal, but solely a determination as to whether the Request for Appeal asserts one (1) or more of the grounds for appeal and is timely filed.

If more than one (1) party appeals the Notice of Outcome, the Appeal Officer will review and decide all appeals related to the Notice of Outcome in one (1) proceeding.

#### **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, Investigator(s), or Decision-Maker(s) 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 the Procedures, the Appeal Officer will dismiss the appeal at the Review for Standing and submit a written decision of dismissal to the Title IX Coordinator, setting forth the rationale for dismissal. The written decision of dismissal will be reviewed by legal counsel. The Title IX Coordinator will send a copy of the written decision to dismiss to the parties and their Advisors.

If any of the grounds in the Request for Appeal meet the grounds set forth above, then the Appeal Officer will submit a written notification to the Title IX Coordinator that the appeal will proceed and specify which grounds will be permitted to proceed. If the Appeal Officer has determined that some grounds asserted in the Request for Appeal do not meet the grounds set forth above, the written notification will state any grounds that the Appeal Officer has dismissed and the rationale for the dismissal. The written decision of dismissal will be reviewed by legal counsel.

When all or part of the Request for Appeal is permitted to proceed, the Title IX Coordinator will send the written notification to all parties and their Advisors and will include a copy of the Request for Appeal to the other party or parties ("Non-Appealing Party"), including any written decision of dismissal of part of the Request for Appeal. When appropriate, the Title IX Coordinator may send the Request for Appeal and written notification to the Investigator(s) and/or the original Decision-Maker. Notices will be mailed, emailed, and/or delivered in person.

The Non-Appealing Party will be given seven (7) Business Days to submit a response to the portion of the appeal that was permitted to proceed to the Title IX Coordinator. The Title IX Coordinator will send all responses to all other parties and their Advisors. If the Non-Appealing Party does not submit a response within this time period, the Appeal Officer will decide the appeal without a response.

The Appealing Party will be given three (3) Business Days to submit a reply to the response. If the Appealing Party does not submit a reply within this time period, the Appeal Officer will decide the appeal without a reply.

Upon receipt of the response(s) and reply(ies) or expiration of the time permitted to submit a response(s) or reply(ies), the Title IX Coordinator will submit all responses and replies received to the Appeal Officer or inform the Appeal Officer that no responses and/or replies were received.

The Appeal Officer may collect any additional information needed. If additional information is collected, all parties will be provided with a copy of the information. If the Decision-Maker would like to review the recording of the hearing, the Decision-Maker may request a copy of the recording or a transcript of the recording.

The Appeal Officer will apply the clear error standard of review and will prepare a Notice of Appeal Outcome and submit it to the Title IX Coordinator. The Notice of Appeal Outcome will be reviewed by legal counsel. The Appeal Officer will render a decision within ten (10) Business Days from the date the Title IX Coordinator sent the responses and/or replies, if any, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

The Notice of Appeal Outcome will be sent to all parties simultaneously, including the decision on each permitted ground and rationale. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for returning the Formal Complaint to the original Investigator(s) and/or Decision-Maker for 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. The Notice of Appeal Outcome will state that the decision is final, unless the matter was returned to the original Investigator(s) and/or Decision-Maker for reconsideration.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email. In rare circumstances where the College has suspended access to a Respondent's College-issued email account, the College may send notices to the Respondent's non-College email address. In such cases, the College will also mail a copy to the Respondent's mailing or permanent address. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **b. Format of Request for Appeal and Responses**

Requests for Appeal and responses are limited to ten (10) pages in length, using 12-point font, double-spaced and with one (1) inch margins on all sides. Replies are limited to five (5) pages in length, using 12-point font, double-spaced and with one (1) inch margins on all sides.

Requests for Appeal must state the grounds for appeal, the evidence and testimony supporting the grounds for appeal, the relief sought (*e.g.*, reversal, reduced/increased sanction, consideration of new evidence or new hearing) and any other appropriate information.

Responses to appeals must state the reasons the appeal or relief sought should not be granted, the evidence and testimony supporting denial of the appeal and any other appropriate information.

Replies to responses are limited to responding to the information and arguments set forth in the response.

### **c. 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 Procedures above.

Pending appeal, the Title IX Coordinator may impose emergency removal, subject to the Procedures above.

The College may place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal.

### **d. 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) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (*i.e.*, de novo review) of the allegation(s). 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, unless the Appeal Officer requests additional information.
- An appeal is not an opportunity for Appeal Officer to substitute their judgment for that of the original Decision-Maker merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be returned to the original Investigator(s) and/or Decision-Maker for reconsideration. Other appeals may be returned to the original Investigator(s) and/or Decision-Maker at the discretion of the Appeal Officer.
- 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.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed by the Appeal Officer or after reconsideration (except in the case of a new hearing).
- The results of reconsideration by a Decision-Maker cannot be appealed.
- The results of a new hearing can be appealed, once, on any of the three (3) 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.

### **37. Long-Term Remedies**

Following the conclusion of the resolution process, and in addition to any sanction(s) 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 Misconduct and/or Retaliation, remedy the effects, and prevent reoccurrence.

These remedies 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 work arrangements for employees;
- Provision of campus safety escorts;
- Climate surveys;
- Policy or Procedure 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, or other academic accommodations; and/or
- Any other remedy, as deemed appropriate.

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

When no policy or procedure violation is found, the Title IX Coordinator will address any remedies that may be applied to the Respondent to ensure no effective denial of educational access.

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

### **38. Failure to Comply with Sanctions and/or Long-Term Remedies**

All Respondents are expected to comply with the assigned sanctions, emergency removal, supportive measures and long-term remedies within the timeframe specified by the Decision-Maker (including the Appeal Officer).

Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s), including suspension, expulsion, and/or termination from the College.

A suspension will only be lifted when compliance with the sanction(s) is achieved to the satisfaction of the Title IX Coordinator.

### **39. Recordkeeping**

The College will maintain for a period of at least seven (7) years records of:

1. Each investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any decision rendered by the Decision-Maker;
3. Any disciplinary sanction(s) imposed on the Respondent;
4. Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
5. Any appeal and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-Makers, Appeal Officers and Advisors; and
7. Any actions, including any supportive measures, taken in response to a Report or Formal Complaint, 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.

### **40. Disabilities Accommodations in the Resolution 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 resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services or Human Resources, 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.

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

This Policy, Procedures and Process supersede any previous policies, procedures and processes addressing Sexual Misconduct and/or Retaliation that fall within the scope of Title IX. 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 resolution 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 the 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.  
The Procedures are effective August 14, 2020.

## APPENDIX A

The following positions, with the exception of those identified as Confidential Resources, have been designated as Mandated Reporters:

- Assistant Deans, Deans
- Associate Vice Presidents, Vice Presidents, President
- Athletics full-time staff and coaches
- Chief Compliance and Fair Practices Officer
- Chief Diversity Officer
- Chief Technology Officer
- Executive Assistant to the President
- Executive Assistant to the Vice President for Learner Support Services
- Executive Assistant to the Vice President for Learning
- Executive Assistant to the Vice President of Learning Resources Management
- Executive Director, Administrative Services
- Executive Director, Institutional Advancement/Foundation
- Executive Director, Strategic Communications
- Human Resources, full-time staff
- Learner Support Services Academic Advisors
- Learner Support Services Retention Advisors
- Learner Support Services Directors, Assistant Directors
- Program Manager, Military & Veterans Resource Center
- Public Safety and Police, full-time staff
- Student Engagement, full-time staff