

**NORTHEAST COMMUNITY COLLEGE**  
**HARASSMENT AND NONDISCRIMINATION**  
**FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD-PARTIES**

**PART I. SUMMARY, SCOPE, AND PRELIMINARY MATTERS**

Northeast Community College, hereinafter the “College”, is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected category, and retaliation for engaging in a protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed internal procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of 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 its procedures during what is often a difficult time for all those involved.

Questions regarding Title IX or these procedures, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with:

Jessica Dvorak  
Associate Vice President of Human Resources  
Title IX Coordinator  
Norfolk Campus  
LLC Suite 100  
801 East Benjamin Ave, Norfolk, NE 68701  
(402) 844-7046  
complianceofficer@northeast.edu

**A. JURISDICTION**

These procedures apply to the educational programs and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, or at College-sponsored events. The Respondent must be a member of the College community in order for its policies and procedures to apply.

These procedures can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College's educational programs. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

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

- 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;
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- 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
- 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 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. All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers or to these procedures to which their employer has agreed to be bound by 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 assist and support a student or employee Complainant who experiences sexual harassment or retaliation in a cooperative internship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **B. DEFINITIONS**

*Advisor:* A person chosen by a party or appointed by the College 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.

*Complainant:* An individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or, an individual who is alleged to be the victim of retaliation for engaging in a protected activity.

*Confidential Resource:* An employee who is not a Mandated Reporter of notice of harassment and/or retaliation.

*Day:* A business day when the College is in normal operation.

*Discrimination:* Conduct on the basis of protected class status that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a College program or activity.

*Education program or activity:* Locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.

*Final Determination:* A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.

*Finding:* A conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").

*Formal Complaint:* A document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment, discrimination, or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.

*Formal Grievance Process:* A method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. Part 106).

*Hearing Decision-Maker/Chair:* Refers to the individual who has decision-making and sanctioning authority within the College's Formal Grievance process.

*Investigator:* The person or persons charged by the College with gathering facts about an alleged violation, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

*Mandated Reporter:* A College employee who is obligated to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.

*Notice:* When an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

*Official with Authority (OWA):* A College employee explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the College.

*Preponderance of the Evidence:* The standard of evidence applied in determining a violation of policy. Generally considered to be “more likely than not” or “the greater weight of the evidence.”

*Remedies:* Post-finding actions following a determination of a violation of policy, provided to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s educational programs.

*Reporter:* The individual providing the notice of harassment and/or retaliation.

*Respondent:* An individual who has been reported to be the perpetrator of conduct that could constitute harassment based on a protected class, sexual exploitation, or retaliation for engaging in a protected activity.

*Resolution:* The result of an informal or Formal Grievance Process.

*Sanction:* A consequence imposed by the College on a Respondent who is found to have violated policy.

*Sexual Exploitation:* When a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

*Sexual Harassment:* The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as set forth in Title IX regulations (34 C.F.R. § 106.30) and identified in detail in these procedures.

### **C. TITLE IX COORDINATOR**

The Title IX Coordinator, or designee, is charged with coordinating the College’s compliance with state and federal civil rights laws. The Title IX Coordinator is not an advocate for either the Complainant or the Respondent. The Title IX Coordinator will explain to both parties the procedures outlined below and the confidentiality provisions. Where appropriate, the Title IX Coordinator will provide to both parties’ information about options for obtaining supportive measures including no contact orders; medical and counseling services; academic support;

information about making a criminal report; information about receiving advocacy services; and information about other helpful campus and community resources and safety measures.

The Title IX Coordinator will offer to coordinate with other campus officials, when appropriate, to implement interim measures such as no-contact orders, rearrangement of living arrangements, or academic accommodations. The Title IX Coordinator will describe the process of a fair and impartial investigation. The Title IX Coordinator will explain to both parties their right to have an advisor of their choice with them during their interviews and during the hearing stage of these procedures.

If an individual does not want to pursue a Complaint, the Title IX Coordinator will inform the individual that the College is limited in the actions it can take without the cooperation of the individual and will explain the full scope of supportive measures available. The individual making the report (Reporter) is encouraged to provide as much detailed information as possible to allow the Title IX Coordinator to investigate and respond as appropriate. The Title IX Coordinator accepts anonymous and third-party reports of conduct and will follow up on such reports but may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the Title IX Coordinator to conduct a meaningful and fair investigation.

A Complainant will not be denied supportive measures simply because they choose not to file a formal Complaint. The Title IX Coordinator will also explain to parties and witnesses that retaliation for reporting alleged violations, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be immediately reported and will be promptly addressed.

#### **D. INDEPENDENCE AND CONFLICT OF INTEREST**

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under these procedures. Individuals who undertake roles under these procedures 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. Any concern involving bias or conflict of interest by the Title IX Coordinator, or any report of misconduct committed by the Title IX Coordinator should be directed to the College President, Leah Barrett at [lbarrett@northeast.edu](mailto:lbarrett@northeast.edu) or (402) 844-7054. Concerns of bias or a potential conflict of interest or reports of misconduct by any other individual operating under these procedures should be raised with the Title IX Coordinator.

#### **E. REPORTING**

Any individual may make a report of an allegation of discrimination, harassment, or retaliation to the Title IX Coordinator. Upon notice by a third party, the Title IX Coordinator will engage in outreach to the identified Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the

Complainant of the availability of supportive measures with or without the filing of a formal Complaint, and explain to the Complainant the process for filing a formal Complaint.

## **F. CONFIDENTIAL RESOURCES**

Behavior that is impermissible under these procedures should be reported. If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with an internal or external confidential resource. These individuals are not required to report incidents to College officials or outside agencies. They can support a student in filing formal reports if requested.

We encourage all such individuals, regardless of whether they make a report formally to the College to obtain support from Confidential Resources, listed below. They can help individuals to obtain resources, provide emotional support, and plan for safety. Individuals who are unsure of whether to report the incident, will find that these confidential services can help to explain options and decide the best course of action.

### **1. COLLEGE CONFIDENTIAL RESOURCES – STUDENTS**

Any student who has experienced discrimination, harassment, or retaliation at any time, on or off campus, past or present, is encouraged to use these support services. If a Complainant would like the details of an incident to be kept confidential, such complaints may be made to any of the following Confidential Resources:

Counseling Center (Monday-Friday from 8:00 a.m. – 5:00 p.m.): (402) 844-7277  
Norfolk Campus  
Union 73 Building  
801 East Benjamin Ave, Norfolk, NE 68701

Faith Regional Health Services provides part-time, free health services for students on the Norfolk campus. During the 2020-2021 academic year, due to COVID-19, students can be served via appointment only by calling (402) 844-7176. No walk-in visits are permitted at this time. All students will need to show their ID card at the time of services. Student Health is closed during weekends, holidays, and breaks. If the on-campus nurse is not available, students can be seen at the off-campus location.

Bright Horizons Campus Advocate  
(402) 379-2026  
Norfolk Campus  
Union 73 Building  
801 East Benjamin Ave, Norfolk, NE 68701

## **2. NON-COLLEGE CONFIDENTIAL RESOURCES – STUDENTS**

- Faith Regional Health Services/Hospital (402) 371-4880 (Norfolk)
- Franciscan Healthcare (402) 372-2404 (West Point)
- Avera St. Anthony’s Hospital (402) 336-2611 (O’Neill)
- MercyOne Siouxland Medical Center (712) 279-2010 (Sioux City)
- UnityPoint Health – St. Luke’s Regional Medical Center (712) 279-3500 (Sioux City)
- Bright Horizons- Resources for survivors of Domestic Violence and Sexual Assault (877) 379-3798
- National Sexual Assault Hotline (800)-656-HOPE (4673)
- Local clergy and attorneys are also included as confidential resources

## **3. OFF-CAMPUS CONFIDENTIAL RESOURCES – EMPLOYEES**

- BestCare Employee Assistance Program (800) 801-4182
- Faith Regional Health Services/ Hospital (402) 371-4880
- Franciscan Healthcare (402) 372-2404 (West Point)
- Avera St. Anthony’s Hospital (402) 336-2611 (O’Neill)
- MercyOne Siouxland Medical Center (712) 279-2010 (Sioux City)
- UnityPoint Health – St. Luke’s Regional Medical Center (712) 279-3500 (Sioux City)
- National Sexual Assault Hotline (800)-656-HOPE (4673)
- Bright Horizons- Resources for survivors of Domestic Violence and Sexual Assault (877) 379-3798
- Local clergy and attorneys are also included as confidential resources

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 or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order. The College employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

## **G. NON-CONFIDENTIAL RESOURCES**

Reports or Complaints of discrimination, harassment, or retaliation may be made at any time (including during non-business hours) to any of the following:

Title IX Coordinator, Jessica Dvorak, (402) 844-7046, [jessicad@northeast.edu](mailto:jessicad@northeast.edu)

Deputy Coordinator, Carly Krause, (402) 844-7045, [ckrause5@northeast.edu](mailto:ckrause5@northeast.edu)

Norfolk Campus  
Lifelong Learning Center, Suite 100  
801 East Benjamin Ave, Norfolk, NE 68701  
[complianceofficer@northeast.edu](mailto:complianceofficer@northeast.edu)

The College has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the College. Officials with Authority are:

- Vice President of Educational Services
- Vice President of Administrative Services and General Counsel
- Vice President of Student Services
- Vice President of Technology Services
- Vice President of Human Resources
- Vice President of Development & External Affairs
- Athletic Director
- Dean of Students
- Dean of Student Success
- Dean of Workforce Development – South Sioux City
- Director of Extended Campus – West Point
- Director of Extended Campus – O’Neill
- Director of Advising Services
- Director of Safety & Emergency Preparedness
- Director of Residence Life and Student Conduct
- Associate Director of Residence Life
- Campus Security: (402) 841-5163 (available 24/7/365)

Local Law Enforcement:

Norfolk Police Department, call 911

#### **H. MANDATED REPORTERS AND FORMAL NOTICE/COMPLAINTS**

All College employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report of discrimination, harassment, or retaliation made to them in the course of their employment. Employees must also 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 employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the College. Supportive measures may be offered as the result of such disclosures without further formal action by the College.

Failure of a Mandated Reporter to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of the College’s policy. A Mandated Reporter can be subject to disciplinary action for failure to comply, per the College’s Administrative Procedures, AP-7322.0, Progressive Discipline for Non-Faculty Employees and AP-7322.1, Progressive Discipline for Faculty Employees. Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, a Mandated Reporter who is themselves a target of discrimination, harassment, and/or retaliation under these procedures is not required to report their own experience, though they are, of course, encouraged to do so. If a student reports an incident to campus authorities, they are NOT automatically required to pursue legal action. Campus Security, as Mandated Reporters, will report the complaint internally. Such complaints may trigger a legal obligation of the College to give notice of potential harm to others on campus. They can also support anyone who wishes to file a criminal complaint through local law enforcement. Internal campus proceedings and external legal processes are conducted independent of each other and the outcome of one does not necessarily influence the other.

## **I. SUPPORTIVE MEASURES**

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of discrimination, harassment, and/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 educational programs or activities, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a Complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they 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 their 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 and will act to ensure as

minimal an academic or occupational impact on the parties as possible.

The College will implement supportive measures in a way that does not unreasonably burden the other party. These actions 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
- Student financial aid counseling
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing Campus Security escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings as required under the Clery Act
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the College's property
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **J. EMERGENCY REMOVAL**

The College can act to remove a student Respondent entirely or partially from its educational programs 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 in conjunction with the Campus Assessment, Response and Evaluation (CARE) Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This 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.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. 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. The Respondent will be given access to a written summary of the basis for the emergency removal 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 of the removal during the period of the investigation and final determination. Violation of an emergency removal under these procedures will be grounds for discipline, which may include expulsion.

The College will implement the least restrictive emergency 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: restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing a leave, and/or suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. 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.

Where the Respondent is an employee, existing provisions for interim action are applicable, as outlined in Board Policy BP-7015 and Administrative Procedures AP-7015.0, Workplace Threats and Violence Reporting, and Board Policy BP-7327 Suspension, Demotion and Termination for Cause.

#### **K. PROMPTNESS**

All allegations are acted upon promptly by the College once it has received notice or a formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always 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 outlined in these procedures will be delayed, the College 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.

#### **L. PRIVACY**

Every effort is made by the College to preserve the privacy of reports. The College will not share the identity of any individual who has made a report or Complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, 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 C.F.R. Part 99; or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these procedures.

The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within these procedures, pursuant to the Family Educational Rights and Privacy Act (FERPA). Information will be shared as necessary with Investigators, Hearing Panel members/Decision-Maker/Chairs, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy. The College may contact parents/guardians 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.

#### **M. TIME LIMITS ON REPORTING**

There is no time limitation on providing notice/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 notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy or procedure) 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.

When a notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

#### **N. ONLINE SEXUAL HARASSMENT AND/OR RETALIATION**

The procedures of the College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the institution's education program and activities or use the institution's networks, technology, or equipment.

Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Any online posting 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 the institution's networks, websites, or between Northeast email accounts) will only be subject to these procedures when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others. 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 or in person, may be regulated by the College only when such speech is made in an employee's role with the College.

## **PART II. PROHIBITED CONDUCT**

### **A. DISCRIMINATORY HARASSMENT**

Discriminatory harassment constitutes a form of discrimination that is prohibited by the College. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

The College does not tolerate discriminatory harassment of any employee, student, visitor, or third-party and will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>1</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive *and* objectively offensive. When discriminatory harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the as outlined in Board Policy BP-7015 and Administrative Procedures AP-7015.0, Workplace Threats and Violence Reporting, and Board Policy BP-7327 Suspension, Demotion and Termination for Cause.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under these procedures, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other informal resolution mechanisms. For assistance with Alternative Resolution and other informal resolution techniques and approaches, employees should contact the Associate Vice President of Human Resources or designee, and students should contact the Vice President of Student Services or designee.

### **B. SEXUAL HARASSMENT**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity

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<sup>1</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Institutions Investigative Guidance.](#)

Commission (EEOC), and the State of Nebraska regard Sexual Harassment as an unlawful discriminatory practice.

The College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community and in compliance with federal Title IX regulations (34 CFR § 106.30). Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

Sexual Harassment:

- 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, or employment.

Quid Pro Quo:

- an employee of the College,
- conditions the provision of an aid, benefit, or service of the College,
- on an individual's participation in unwelcome sexual conduct.

Sexual Assault, defined as:

- Any sexual act<sup>2</sup> directed against another person

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<sup>2</sup> A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

Forcible Rape:

- 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.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

Incest:

- Non-forcible sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Nebraska law.

Statutory Rape:

- Non-forcible sexual intercourse,
- with a person who is under the statutory age of consent under Nebraska law.

Dating Violence, 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.

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Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Domestic Violence,<sup>3</sup> 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 Nebraska, 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 Nebraska.
- Stalking, 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 and with similar identities 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.

### C. RETALIATION

Protected activity under these procedures includes reporting an incident that may implicate these procedures, participating in a 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.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will

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<sup>3</sup> To categorize an incident as Domestic Violence under this Policy, 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.

be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The College and all members of the College's community are prohibited from taking or attempting 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 or policy, or because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under these procedures. The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under these procedures does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

#### **D. UNETHICAL RELATIONSHIPS/CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as a faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a violation of these procedures still exists. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of these procedures, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes student organization leaders, Resident Advisors (RAs), Student

Advisors (SAs), and students over whom the RA/SA has direct responsibility. Although no relationships are specifically prohibited, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under these procedures, based on the circumstances of the allegation.

#### **E. OTHER CIVIL RIGHTS OFFENSES**

In addition to the forms of sexual harassment described above, which are covered by Title IX, the College additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: an individual 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 harassment under these procedures. Examples of Sexual Exploitation include, but are not limited to:
  - 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 being observed)
  - Invasion of sexual privacy
  - 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
  - Prostituting another person
  - 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 virus, disease, or infection
  - 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
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - 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
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Knowing creation, possession, or dissemination of child pornography

- Threatening or causing physical harm; extreme verbal, emotional, or psychological abuse; or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities, including disparate treatment;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

## **F. STANDARDS FOR ASSESSING CONDUCT**

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

### **1. CONSENT**

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party 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 you, you can kiss them back (if you 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 party involved in an incident. Instead, the burden remains on the institution to determine whether these 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 BDSM<sup>4</sup> 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 an evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

## **2. FORCE**

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.

## **3. INCAPACITATION**

A person cannot consent if they are 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 these procedures if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault allegation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an

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<sup>4</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

objective, reasonable person standard that 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 their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

These procedures also cover 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.

#### **4. COERCION**

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.

### **PART III. APPLICATION OF THESE COLLEGE STANDARDS**

#### **A. MANDATED REPORTING**

All College employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately. 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 harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or College official unless a Complainant has requested the information be shared. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or violations of these procedures, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

#### **B. CONFIDENTIALITY OF COMPLAINTS AND REPORTS**

Parties in these processes, including the Complainant, the Respondent, and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters

subject to these procedures.

In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The Title IX Coordinator will keep confidential the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the College's compliance with federal law. The investigation report will be disclosed only to the Complainant, Respondent, Title IX Coordinator, Hearing Decision-Maker/Chair or Panel as necessary, and College officials as necessary to prepare for subsequent proceedings (e.g., College President and College Legal Counsel). Information about complaints and reports, absent personally identifiable information, may be reported to College officials and external entities for statistical and analysis purposes pursuant to federal and state law and institution policy.

### **C. RESPONSE BY TITLE IX COORDINATOR UPON RECEIPT OF ANY FORMAL NOTICE/COMPLAINT OF A VIOLATION OF THESE PROCEDURES**

The College will act on any formal notice/complaint of violation of these procedures that is received by the Title IX Coordinator or any other Official with Authority by applying either the Title IX Regulatory Grievance Process or the College Grievance Process. A set of technical dismissal requirements within the Title IX regulations may apply as described below.

The Title IX Regulatory Grievance Process applies only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) including students, staff, administrators, or faculty members. If other allegations are made, such as protected class harassment or discrimination as defined above, the allegations will be resolved using the College Grievance Procedure, AP-7710.0. The College Grievance Procedure, AP-7710.0, can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within the Title IX Regulatory Grievance Process, as determined by the Title IX Coordinator.

Collective bargaining employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of these procedures are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by these procedures will be addressed through procedures described in student, faculty, or staff handbooks.

#### **D. TITLE IX REGULATORY DISMISSAL STANDARDS**

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

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined previously, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the College and/or the College does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in an educational program or activity of the College.

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

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

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

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

This dismissal decision is appealable by any party under the procedures for appeal. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

#### **E. FEDERAL TIMELY WARNING OBLIGATIONS**

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 them 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.

#### **F. FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a finding of responsibility under these procedures. Additionally, witnesses and parties knowingly providing false evidence, tampering with, or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

#### **G. AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS**

The College strongly encourages students and employees to report instances of discrimination, harassment, and retaliation involving students and/or employees. Therefore, students and employees who report information involving students and/or employees will not be disciplined by the College for any violation of the College's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

#### **H. FREE SPEECH AND ACADEMIC FREEDOM**

These procedures shall not be construed or applied to restrict academic freedom at the College, nor shall they be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

The College recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the College. In addressing all complaints and reports under these procedures, the College will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees. Although the College will protect students' and employees' rights against harassment and discrimination, these procedures do not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

#### **I. EXTERNAL COMPLAINTS**

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), Office for Civil Rights (OCR) of the U.S. Department of Education, the Department of Justice, and/or the

Nebraska Equal Opportunity Commission.

- **Nebraska Equal Opportunity Commission (NEOC)**

P.O. Box 94934  
Lincoln, NE 68509-4934  
(402) 471-2024  
neoc.nebraska.gov

- **Equal Employment Opportunity Commission (EEOC)**

1222 Spruce St., Room 8.100  
St. Louis, MO 63103  
(800) 669-4000  
info@eeoc.gov

- **Assistant Secretary for Civil Rights**

**Office for Civil Rights, National Headquarters**

U.S. Department of Education  
Lyndon Baines Johnson Dept. of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: (800) 421-3481  
Fax: (202) 453-6012; TDD: (800) 877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

## **J. CRIMINAL REPORTING**

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to Campus Security at (402) 841-5163, on the Norfolk campus. Some forms of discrimination, harassment and/or retaliation may also be crimes. For example, sexual assault, stalking, and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you to: obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

In order to preserve any physical evidence of a sexual offense, victims of sexual assault are urged not to bathe, shower, use a douche or change clothing. Such victims should go immediately to a medical facility of their choice to receive medical treatment if needed and to ensure that the appropriate examinations are conducted to collect the necessary physical evidence of the assault. The cost of medical treatment or examination of the victim of a sexual

assault for physical evidence shall be charged to the State of Nebraska. Medical providers will not submit to a patient or their insurance for any cost associated with such an examination.

## **PART IV. TITLE IX REGULATORY GRIEVANCE PROCESS**

### **A. NOTICE/FORMAL COMPLAINT**

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

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

- Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- An informal resolution (upon submission of a formal complaint); and/or
- A Formal Title IX Regulatory Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The College uses the Formal Title IX Regulatory Grievance Process to determine whether or not sexual harassment or retaliation has occurred. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

### **B. INITIAL ASSESSMENT**

Following receipt of a formal Complaint under these procedures, the Title IX Coordinator or designee engages in an initial assessment, typically within one (1) to five (5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
- If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
- If a formal Complaint is made (requiring the signature of the Complainant), the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- If an informal resolution option is preferred, the Title IX Coordinator assesses whether

the Complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.

- If a Title IX Regulatory Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX or these procedures.
- If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
- Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one or more trained individuals to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

## **C. RESOLUTION PROCESSES**

### **1. INFORMAL RESOLUTION**

The College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal Complaints of sexual harassment consistent with this section. Similarly, the College may not require the parties to participate in an Informal Resolution process under this section and may not offer an Informal Resolution process unless a formal Complaint is filed. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the College:

- Provides to the parties a written notice disclosing: the allegations, the requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the grievance process with respect to the formal Complaint, and any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;
- Obtains the parties' voluntary, written consent to the Informal Resolution process; and
- Does not offer or facilitate an Informal Resolution process to resolve allegations that an employee sexually harassed a student.

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

- When the parties agree to resolve the matter through an alternate resolution mechanism usually before a formal investigation takes place.
- When the Respondent accepts responsibility for the allegation, and desires to accept a sanction and end the resolution process.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Resolution Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College. The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **2. FORMAL GRIEVANCE RESOLUTION PROCESS**

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

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies and procedures implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the College’s prohibition of retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and

suggestions for ways to identify an Advisor, a statement informing the parties that the College prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,

- Detail on how the party may request disability accommodations during the interview 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 that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Notice 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 or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

#### **D. RIGHT TO AN ADVISOR**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution 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 hearing Decision-maker/Chair(s).

Parties may request to have more than one advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community. The Title IX Coordinator will also assign an Advisor for any party if the party requests.

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

#### **E. ADVISOR'S ROLE IN MEETINGS AND HEARING**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should 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.

Under U.S. Department of Education regulations under Title IX, cross examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

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

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (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. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

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. The parties are expected to ask and 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 their advisee, the Advisor may consult with their advisee, 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.

Any Advisor who oversteps their role as defined by these procedures 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.

## **F. INVESTIGATION PROCESS**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve

interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

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

- Determine the identity and contact information of the Complainant.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- 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 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.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with

the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The investigator shares the report with the Title IX Coordinator for feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices, including relevant physical or documentary evidence, will be included.

#### **G. ROLE OF WITNESSES IN THE INVESTIGATION**

Witnesses (as distinguished from the parties) may be students or employees or others identified by the Investigator or by the parties. All witnesses are strongly encouraged to participate in good faith with the investigation process. Witnesses who are employees of the College are expected to cooperate with and participate in the investigation and resolution process. Failure of employee witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Technology may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

#### **H. 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.

#### **I. NOTICE OF HEARING**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Hearing

Decision-Maker/Chair will send notice of the hearing to the parties. Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Hearing notice will contain:

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

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

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to these 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. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under these procedures is not in good standing to graduate.

#### **J. DECISION MAKER/CHAIR**

The College will designate a single Decision-Maker/Chair at the discretion of the Title IX Coordinator. The Decision-Maker will also Chair the hearing.

The Decision-Maker/Chair will not have had any previous involvement with the investigation.

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

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

#### **K. HEARING PROCEDURES**

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

Participants at the hearing will include the Decision-Maker/Chair, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Decision-Maker/Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Decision-Maker/Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-Maker/Chair and the parties' advisor and will then be excused.

#### **L. RECORDING**

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/Chair, 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 or transcript of the recording without permission of the Title IX Coordinator.

#### **M. DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF**

The Decision-Maker/Chair will determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

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

The Decision-Maker/Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-Maker/Chair may – at their discretion – consider the statements, but they are not binding.

The Decision-Maker/Chair will review the statements and any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-Maker/Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

#### **N. NOTICE OF THE OUTCOME**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-Maker/Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-Maker/Chair's deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

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

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

The Notice of Outcome will also include information on when the results are considered by the College to be final and will include available appeal options.

## **PART V. COLLEGE GRIEVANCE PROCESS**

The College Grievance Process is applicable when the Title IX Coordinator determines that the Title IX Regulatory Grievance Process is inapplicable, or offenses subject to that procedure have been dismissed. If the Title IX Regulatory Grievance Process is applicable, it must be applied in lieu of this the College Grievance Process.

### **A. INITIAL ASSESSMENT**

Following intake, receipt of notice, or a complaint of an alleged violation of these procedures, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will initiate at least one (1) of these responses:

- Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- An informal resolution; and/or

- A formal Administrative Resolution under these procedures to investigate the alleged violation(s) and recommended finding, subject to a determination by the Title IX Coordinator or Decision-Maker/Chair and the opportunity to appeal to the Appeal Decision-Maker/Chair.

The investigation and the subsequent Administrative Resolution determine whether these procedures have been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

## **B. ADVISORS**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution 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 hearing Decision-Maker/Chair.

Parties may request to have more than one advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community. The Title IX Coordinator will also assign an Advisor for any party if the party requests.

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 provide timely notice to the Title IX Coordinator if they change Advisors at any time. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before any hearing.

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. The parties are expected to ask and 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 their advisee, the Advisor may consult with their advisee, 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 are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

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

## **C. RESOLUTION OPTIONS**

### **1. INFORMAL RESOLUTION**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution (such as, but not limited to facilitated dialogue), or when the Respondent accepts responsibility for violating these procedures, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Administrative Resolution may be pursued.

### **A. ALTERNATIVE RESOLUTION**

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternative Resolution. The Title IX Coordinator determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. In an Alternative Resolution, sanctions and/or appropriate remedies are imposed as agreed upon by the parties. When sanctions/remedies result from an Alternative Resolution, the College will impose the agreed-upon sanctions and/or remedies and will ensure compliance with sanctions. The Title IX Coordinator maintains records of any

resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

## **B. RESPONDENT ACCEPTS RESPONSIBILITY FOR ALLEGED VIOLATIONS**

The Respondent may accept responsibility for all or part of the alleged violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of these procedures.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

## **2. ADMINISTRATIVE RESOLUTION VIA AN INVESTIGATION AND HEARING**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by these procedures at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least two (2) days in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, 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 or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the sections of these procedures allegedly violated, if known at the time. Alternatively, that information can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

The College aims to complete all investigations within a sixty (60) business daytime period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Investigator(s), usually within two (2) business days of determining that an investigation should proceed. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias. 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 so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

Investigations are completed expeditiously, normally within fifteen to thirty (15-30) business days, though some investigations take 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 the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors are being investigated by law enforcement. The College will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

The 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.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

#### **D. INVESTIGATION PROCESS**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

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

- Determine the identity and contact information of the Complainant.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- Interview all relevant individuals and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation and all evidence.
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s).
- Provide each party with a full and fair opportunity to respond to the report in writing within five (5) business days and incorporate that response, if any, into the report.
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop.
- Provide a final report to the Title IX Coordinator which may include a recommendation.
- Include in the report a recommendation to the Title IX Coordinator/Decision Maker on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred.

#### **E. DETERMINATION**

Within two to three (2-3) business days of receiving the Investigator's final report, the Title IX Coordinator or designee reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator or Decision-Maker/Chair may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

A recommendation of the investigation, if any, should be strongly considered but is not binding on the Title IX Coordinator or Decision-Maker/Chair. The Title IX Coordinator or Decision-Maker/Chair may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

#### **G. ADDITIONAL DETAILS OF THE INVESTIGATION PROCESS**

Witnesses (as distinguished from the parties) may be students or employees or others identified by the Investigator or by the parties. All witnesses are strongly encouraged to participate in good faith with the investigation process. Witnesses shall cooperate with and participate in the investigation and resolution process. Failure of employee witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Technology may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

No unauthorized audio or video recording of any kind is permitted during the resolution process including investigative interviews. 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.

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Title IX Coordinator or Decision-Maker/Chair determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the irrelevant sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); (3) irrelevant character evidence.

Although previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator or Decision-Maker/Chair with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **H. NOTICE OF THE OUTCOME**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within three (3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are 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 or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged violation, any sanction(s) that may result which the College is permitted to share pursuant to state or federal law, and the rationale supporting the findings to the extent the College is permitted to share under state or federal law. The notice will detail when the determination is considered final (see Appeals below) and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

## **PART VI. SANCTIONS**

Whether arising under the Title IX Regulatory Grievance Process or the College Grievance Process, factors considered when determining any sanction(s), responsive action(s), or long-term remedies may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous allegations or allegations involving similar conduct.

- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation.
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community.
- The impact on the parties.
- Any other information deemed relevant by the Title IX Coordinator or Decision-Maker/Chair.

The sanction(s) will be implemented as soon as is feasible. The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

#### **A. STUDENT SANCTIONS**

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

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of College Policy and/or these procedures, providing for more severe disciplinary sanctions in the event that the student is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of College property, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the College.
- *Expulsion:* Permanent termination of student status, revocation of rights to be on campus for any reason or attend College-sponsored events.
- *Withholding Diploma and/or Official Transcripts:* The College may withhold a student's diploma and/or official transcripts for a specified period of time, and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

#### **B. EMPLOYEE SANCTIONS**

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

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

### **C. LONG-TERM REMEDIES/ACTIONS**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

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

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no violation is found. When no violation is found, the Title IX Coordinator will address any remedial requirements owed by the College to the Respondent.

## **PART VII. APPEALS**

Whether arising under the Title IX Regulatory Grievance Process or the College Grievance Process, any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within three (3) days of the delivery of the Notice of Outcome.

A single Appeal Decision-Maker will Chair the appeal and will be appointed by the Title IX Coordinator. No Appeal Decision-Maker/Chair will have been involved in the process previously, including any appeal of a dismissal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-Maker/Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **A. GROUNDS FOR APPEAL**

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- 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
- The Title IX Coordinator, Investigator(s), or Decision-Maker/Chair(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 above, that request will be denied by the Appeal Decision-Maker/Chair and the parties and their Advisors will be notified in writing of the denial and the rationale. When appropriate, the Appeal Decision-Maker/Chair may also notify the Investigator(s) and/or the original Decision-Maker/Chair(s). The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Maker/Chair(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-Maker/Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds above by the Appeal Decision-Maker/Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-Maker/Chair(s), as necessary, who will submit their responses in three (3) business days, which will be circulated

for review and comment by all parties.

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

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

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

## **B. APPEAL CONSIDERATIONS**

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal. An appeal is not an opportunity for Appeal Decision-Maker/Chair(s) to substitute their judgment for that of the original Decision-Maker/Chair(s) merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-Maker/Chair(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

Appeals granted based on new evidence should normally be remanded to the original

Investigator(s) and/or Decision-Maker/Chair(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). In rare cases where a procedural error cannot be cured by the original Decision-Maker/Chair(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-Maker/Chair(s). The results of a remand to a Decision-Maker/Chair(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.

In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **PART VIII. OTHER REMAINING PROVISIONS**

### **A. DISABILITIES ACCOMMODATION 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 these procedures. Anyone needing such accommodations or support should contact the Director of Disability Services or the Director of Human Resources, Talent and HR Compliance, 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.

### **B. WITHDRAWAL OR RESIGNATION WHILE ALLEGATIONS ARE PENDING**

Students: The College does not permit a student to withdraw if that student has an allegation pending under these procedures. The College may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and the College's responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status. Nothing under this provision prevents the College from making any required or permissible reports to law enforcement or any other entity regarding any allegations under this procedure.

### **C. COUNTERCLAIMS**

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

Counterclaims determined to have been reported in good faith will be processed using these procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of College policy.

#### **D. FAILURE TO COMPLY WITH SANCTIONS**

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

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

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

#### **E. RECORDKEEPING**

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

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the College's educational programs or activities;
- Any appeal and the result therefrom;
- Any Informal Resolution and the result therefrom;
- All materials used to train Title IX Coordinators, Investigators, Decision-Maker/Chairs, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on the institution's website; and
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:

- The basis for all conclusions that the response was not deliberately indifferent;
- Any measures designed to restore or preserve equal access to the College’s education program or activity; and
- 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.

## **F. REVISION OF PROCEDURES**

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

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate enrollment 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 these procedures.

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

These procedures do not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This administrative procedure is effective on May 19, 2021.

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