

**St. Mary’s College of Maryland**  
**Procedures to Resolve Complaints of**  
**Sexual Misconduct against a Student**

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**I. Overview**

These Procedures to Resolve Complaints of Sexual Misconduct against a Student (Student Procedures) provide a process for the prompt and equitable investigation and adjudication of complaints of sexual and gender-based discrimination, sexual and gender-based harassment, sexual assault, relationship violence and stalking (collectively referred to as Sexual Misconduct) against a student enrolled at St. Mary’s College of Maryland (the College). The Student Procedures ensure the College’s compliance with federal and State law as well as the College’s Policy against Sexual Misconduct (the Policy).

Any person alleging Sexual Misconduct against one of the College’s students may submit a report to the College as set forth below. Anyone may submit a report, including but not limited to a student; a member of the faculty, administration or staff; a visitor or guest to the campus community; local police; or a family member. The College, on its own, may also initiate, investigate, and adjudicate complaints of Sexual Misconduct against a student under the Student Procedures. The Student Procedures also address reports of retaliation allegedly committed by a student in connection with any Sexual Misconduct complaint, investigation or adjudication.

Complaints against a non-student (i.e., faculty, staff, or a third party) shall not proceed under the Student Procedures. Such complaints will be handled using the Procedures to Resolve Complaint of

Sexual Misconduct against a College Employee, Volunteer or Contractor available at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights).

The Student Procedures are effective as of July 1, 2016, and replace and supersede any prior procedures related to complaints, reports, investigation or adjudication of any allegation of Sexual Misconduct against one of the College's students.

Any individual who wishes to make a report of Sexual Misconduct is encouraged to make a report directly to the Title IX Coordinator, a Deputy Title IX Coordinator (Deputy), the Dean of Students Office, Public Safety or the Office of Student Conduct. Reports can be made in person, by telephone, by email or by submission of an online form.

Once the College knows of possible Sexual Misconduct, it will take immediate and appropriate action to investigate the report or otherwise determine what occurred. This obligation applies to any allegations of Sexual Misconduct covered by the Policy regardless of whether a parallel law enforcement investigation or action is pending and regardless of whether a Formal Complaint (defined below) is provided.

In every instance when a report is received under the Policy, the Title IX Coordinator or Deputy will conduct an **Initial Assessment** to ensure the safety of the person who allegedly experienced Sexual Misconduct (Reporting Party) and to determine the nature of the allegations against the person who allegedly engaged in Sexual Misconduct (Responding Party). At the conclusion of the Initial Assessment, the Title IX Coordinator or Deputy will ascertain whether the Reporting Party wishes to pursue an Informal Resolution or Formal Resolution.

**Informal Resolution** is a voluntary process wherein the Title IX Coordinator or Deputy facilitates an agreement between the Reporting Party and the Responding Party (collectively referred to as the "Parties") to implement non-disciplinary measures to resolve allegations of sexual or gender-based discrimination, sexual or gender-based harassment, relationship violence that does not involve allegations of sexual assault, and/or stalking. Informal Resolution cannot be used to resolve allegations of sexual assault.

**Investigation** is the process of gathering facts regarding a Reporting Party's allegations. **Formal Resolution** is a process by which the Investigator(s) review the facts gathered during the Investigation and determine whether the Responding Party is responsible for a violation of the Policy. If so, the Investigator(s) issue disciplinary sanctions, up to and including expulsion.

## II. Initial Assessment

The first step of the Initial Assessment will usually be a preliminary meeting between the Reporting Party and the Title IX Coordinator or Deputy. If the report was made by a third party, the Title IX Coordinator or Deputy may meet with the third party to assess the nature of the allegations and the names of the persons involved in the incident.

The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report and to provide the Reporting Party with information about resources, procedural options and interim measures. At the preliminary meeting, the Title IX Coordinator or Deputy will:

*Revisions effective July 1, 2016 – updated July 1, 2018*  
*Revisions approved by Board May 13, 2016*

- Assess the nature and circumstances of the allegations;
- Address immediate physical safety and emotional well-being needs of the Reporting Party;
- Notify the Reporting Party of the right to contact law enforcement;
- Offer assistance and transportation to the Reporting Party to see medical treatment;
- Inform the Reporting Party of the importance of preservation of evidence;
- Provide the Reporting Party with information about on- and off-campus resources;
- Provide the Reporting Party with information about Interim Measures (defined below);
- Explain procedural options, including Informal Resolution, if applicable, and Formal Resolution;
- Inform the Reporting Party of the Reporting Party's right to have an advisor, advocate, or support person present during any meeting throughout the process;
- Assess for pattern evidence or other similar conduct by Responding Party; and
- Explain the College's Policy prohibiting retaliation.

During the Initial Assessment, the Title IX Coordinator or Deputy will determine the risk of harm to the broader campus community and take steps necessary to address any identified risks. If the report involves allegations of a crime, the Title IX Coordinator or Deputy will report the alleged crime to the Director of Public Safety for inclusion in the College's daily crime log and will assess whether the reported conduct requires issuance of a timely warning under the Clery Act or must be included in the College's annual Clery Report.

The Initial Assessment will proceed to the point where a reasonable assessment of the safety of the Reporting Party and of the campus community can be made. At the conclusion of the Initial Assessment, the Title IX Coordinator or Deputy will determine whether the report falls within the scope of the definition of Sexual Misconduct. If so, the Title IX Coordinator or Deputy will ascertain whether the Reporting Party wishes to pursue an Informal Resolution or Formal Resolution.

If the Reporting Party wishes to pursue a Formal Resolution, the Title IX Coordinator or Deputy will assign an Investigator(s) to begin an Investigation.

If the Reporting Party wishes to pursue an Informal Resolution and the allegations of Sexual Misconduct do not involve allegations of sexual assault, the Title IX Coordinator or Deputy will contact the Responding Party to begin the Informal Resolution process. If the Reporting Party wishes to pursue an Informal Resolution and the allegations involve sexual assault, the Title IX Coordinator will inform the Reporting Party that the Informal Resolution process is not available and will offer to pursue an Investigation and Formal Resolution.

The Title IX Coordinator or Deputy also may offer the Reporting Party protective remedies that do not impact the Responding Party. The Title IX Coordinator or Deputy will confirm the Reporting Party's desired process via email.

The Title IX Coordinator or Deputy may consult relevant College employees and legal counsel as needed.

### III. Reporting Party's Request Not to Pursue Investigation or Adjudication

A Reporting Party may request that the College take no action, that an Investigation not be conducted, or that a specific adjudication process or part thereof not take place. A Reporting Party may also decline to respond to requests from the Title IX Coordinator or Deputy to discuss the allegations of Sexual Misconduct.

If the Reporting Party makes one of these requests or does not respond to requests to discuss the allegations of Sexual Misconduct, the Title IX Coordinator or Deputy will consider the reasons for the request or decision not to appear for a meeting, including concerns about the continued safety of the Reporting Party and members of the campus community. The Title IX Coordinator or Deputy will inform the Reporting Party that the College's ability to investigate, discipline the Responding Party or otherwise respond to the report may be limited.

The Title IX Coordinator or Deputy will balance the Reporting Party's desire not to have the report investigated or adjudicated against considerations about the continued health and safety of members of the community. If a Reporting Party does not want to have a report investigated or declines to respond to requests to discuss the allegations, and the Title IX Coordinator or Deputy has concerns that not taking action might violate law and/or endanger the health or safety of any individual, the Title IX Coordinator or Deputy will weigh the following factors in considering a request that no Investigation or adjudication be conducted:

- The seriousness of the conduct;
- The respective ages and roles of the Reporting Party and Responding Party;
- The rights of the Responding Party to receive notice before disciplinary action is sought;
- Circumstances that suggest there is an increased risk of the Responding Party committing additional acts of sexual violence or other violence (*e.g.*, whether there have been other complaints or reports of harassment or misconduct about the same Responding Party, whether the Responding Party has a history of arrests or records from a prior school indicating a history of violence, whether the Responding Party threatened further sexual violence or other violence against the Reporting Party or others, and whether the sexual violence was committed by multiple Responding Parties);
- Circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (*e.g.*, whether the Reporting Party's report reveals a pattern of perpetration through the use of illicit use of drugs or alcohol, at a given location or by a particular group);
- Whether the sexual violence was perpetrated with a weapon; and
- Whether the College possesses other means to obtain relevant evidence (*e.g.*, security cameras or personnel, physical evidence).

The Title IX Coordinator or Deputy may consult with relevant College employees, including but not limited to, the Dean of Students, the Provost, the Director of Human Resources, and legal counsel to determine whether a request not to investigate or adjudicate may be granted. The Title IX Coordinator or Deputy will make the ultimate decision about whether to conduct an Investigation or respond to the report in another manner, including taking protective remedies, such as those described below.

The College will take all reasonable steps to investigate and respond to the report consistent with the request for privacy or request not to pursue an Investigation. If the College is unable to take action consistent with the request of the Reporting Party, the Title IX Coordinator or Deputy will inform the Reporting Party via email about the College's chosen course of action.

#### **IV. Confidentiality of Complaints and Reports**

The College understands that the Reporting Party, Responding Party, and witnesses involved in any Sexual Misconduct matter desire confidentiality during the investigation and adjudication of such matters. While the College will keep these matters confidential to the extent possible and as required by law, the College cannot ensure complete confidentiality, or even the confidentiality requested by parties, in all cases.

The Title IX Coordinator, Deputy and Investigators will, to the best of their ability, keep private the information provided by the Reporting Party, Responding Party, or witnesses. The Title IX Coordinator, Deputy, and Investigator(s) will disclose this information only to individuals who need to know information related to the allegations in order to investigate or adjudicate the matter; to protect the health, safety and wellness of the College community; and/or to individuals allowed to know by law.

In addition, the Title IX Coordinator may need to disclose information to law enforcement consistent with State and federal law; to other College employees as necessary for coordinating Interim Measures; for health, welfare, safety, and other appropriate reasons; as well as to government agencies who review the College's compliance with federal and State law. Information about complaints and reports, absent personally identifiable information, may be reported as needed within the College and/or to external entities for statistical and analysis purposes pursuant to applicable federal and State law and College policy.

Confidential assistance can be obtained through the Confidential Resources listed in the Policy, available at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights).

#### **V. Interim Measures and Resources**

Any participant in the investigation process may request Interim Measures, as appropriate, to assist or protect the Parties during any investigation and adjudication process. The College may also initiate Interim Measures on its own. More information on obtaining Interim Measures may be found in the Policy, available at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights).

The Title IX Coordinator or Deputy will also inform the participants in the investigation of existing options for counseling, health, mental health, victim advocacy, and other services available on- and off-campus for the parties during any investigation and adjudication of allegations of Sexual Misconduct. A

list of on-campus and off-campus resources is located in the Policy, available at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights).

## **VI. Advisors and Attorneys**

The Parties have the right to be assisted by an advisor of their choice to provide support through the investigation and adjudication of a complaint of Sexual Misconduct. Advisors may not be a witness or other party in the proceeding. Parties who wish to consult with an attorney may do so at their own expense. Advisors may accompany the student to any meeting or interview.

Advisors have no speaking role in a meeting or interview and are not permitted to ask or answer questions. An advisor may only provide advice to the Parties in a non-disruptive manner (such as communicating in writing). All communication regarding the resolution process will be directed to the student. The College will only respond to communications received from the student. An advisor will not be permitted to communicate on the student's behalf. Students may contact the Title IX Coordinator for a referral to a trained advisor.

If a Party wishes to have an advisor accompany the Party to a meeting or interview, the Party must give notice to the Title IX Coordinator or Deputy at least twenty-four (24) hours prior to any meeting or interview that an advisor will attend. Students should select an advisor whose schedule allows attendance at any meeting or interview. Delays will not normally be allowed due to the scheduling conflicts of an advisor.

In the context of serving as an advisor to a Party, an advisor's statements are not made on behalf of the College but are solely made as an advocate for a Party. It is important, when one chooses an advisor, to ask for the individual's consent to serve in this capacity before divulging any confidential information.

## **VII. Resolution**

There are two avenues for resolution of allegations of Sexual Misconduct: Informal Resolution and Formal Resolution. The Title IX Coordinator or Deputy is available to explain the procedures for either form of resolution.

For a summary of the differences between Informal and Formal Resolution, please see the table below:

Informal Resolution	Formal Resolution
Agreement between the Parties to implement non-disciplinary remedies, facilitated by Title IX Coordinator or Deputy	Process by which the Investigator(s) review the facts gathered during an Investigation and determine whether the Responding Party is responsible for a violation of the Policy
Available for allegations of any kind of sexual misconduct except sexual assault	Available for allegations of any kind of sexual misconduct
Parties are not required to use Informal Resolution	If a Responding Party is found responsible, Investigator(s) issue disciplinary sanctions, up to and including expulsion
At any point during Informal Resolution, Parties or the Title IX Coordinator or Deputy may end the Informal Resolution and begin a Formal Resolution	

**a. Informal Resolution**

The Informal Resolution process may be used at any time after the College has sufficient information about the nature and scope of the alleged Sexual Misconduct, which may occur at any time after the Initial Assessment. An Informal Resolution is an agreement between the Parties to implement certain non-disciplinary remedies that is facilitated and approved by the Title IX Coordinator or Deputy.

Except where the Reporting Party has alleged that a Sexual Assault has occurred, the Reporting Party generally has the option to engage in the Informal Resolution process at any time during the investigation and adjudication process. In cases involving allegations of Sexual Assault, Informal Resolution is not appropriate at any step in the process, even if both Parties indicate a preference for Informal Resolution.

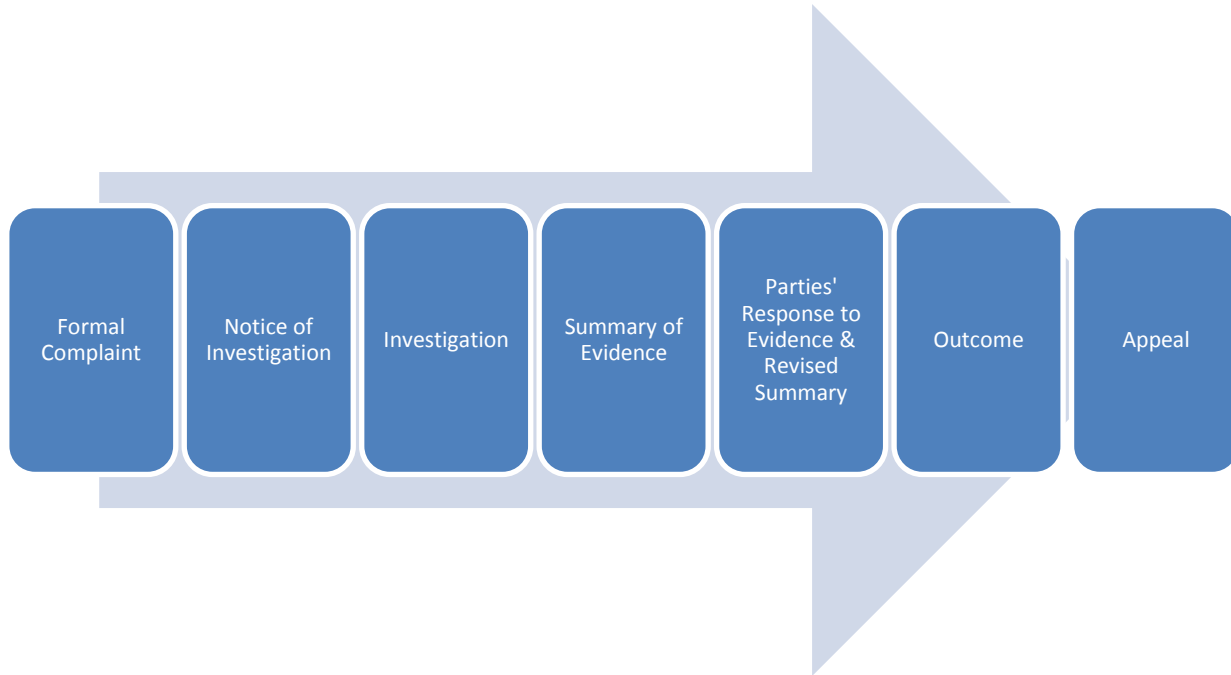
Regardless of the type of allegations, the Parties are never required to use the Informal Resolution process. If, at any point during the Informal Resolution process, the Parties or the Title IX Coordinator or Deputy wishes to cease the Informal Resolution process and to proceed through Formal Resolution process, the Formal Resolution process outlined below will be implemented.

The Informal Resolution must adequately address the concerns of the Reporting Party, as well as the rights of the Responding Party and the overall intent of the College to stop, remedy and prevent Sexual Misconduct. An Informal Resolution might include, but is not limited to, non-disciplinary remedies such as:

- Implementing agreed upon Interim Measures (see the Policy, available at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights), for a list of possible Interim Measures);
- Providing training or counseling to an individual or group;
- Having an informal discussion with the Responding Party;
- Requesting a written apology from the Responding Party;
- Increasing monitoring or security at specified locations; or
- Facilitating a confidential conversation between the Parties; and
- Any other remedy that can be tailored to the Parties to achieve the goals of the Policy.

## b. Formal Resolution

For an overview of the Formal Resolution process, please see the figure below.



### i. Formal Complaint

A person wishing to initiate a Formal Resolution against a Student (i.e., a formal investigation and adjudication) should generally submit a written statement (Formal Complaint) using the College's Sexual Misconduct Formal Complaint Form. The Formal Complaint should set forth the details of the Reporting Party's allegations, including, to the extent known:

- The names and contact information of the person(s) involved in the incident of Sexual Misconduct,
- The names and contact information of any witnesses to the incident of Sexual Misconduct,
- The relevant dates and places,
- Statements made by the Parties and/or witnesses that may be relevant to the allegations,
- Any documentation or communications to support the claim, and
- The remedy requested.

The Formal Complaint Form is located at [www.smcm.edu/campus-rights](http://www.smcm.edu/campus-rights). Hard copies are also available in the Office of the Title IX Coordinator.



If the Reporting Party declines to submit a written Formal Complaint, the Title IX Coordinator or Deputy may draft the Formal Complaint based on the Reporting Party's oral description of the allegations and submit it to the Reporting Party to review for accuracy.

The Formal Complaint must be signed by the Reporting Party. If the Reporting Party declines to sign the Formal Complaint or chooses not to cooperate with the investigation, the Title IX Coordinator or Deputy may go forward with these Procedures, as required, without the Reporting Party's participation.

A Reporting Party should schedule an in-person meeting with the Title IX Coordinator or Deputy as promptly as possible to permit the College to accurately investigate the allegations and appropriately remedy any violation(s).

The Reporting Party may supplement the Formal Complaint with additional information during the Investigation.

## **ii. Notice of Investigation**

As soon as practicable, the Title IX Coordinator or Deputy will send a written notice (Notice) to the Parties that the Formal Resolution process has been initiated and that an Investigation will begin. The Notice will be sent via email concurrently to each Party and if assigned, campus mailboxes. The Notice may be provided to College employees who, in the discretion of the Title IX Coordinator or Deputy, have a need to know that the Formal Resolution process has begun.

The Notice will be prepared by the Title IX Coordinator or Deputy and will include:

- The name of the Reporting Party;
- The date, time and place of the alleged Sexual Misconduct, to the extent known;
- The Policy provisions alleged to have been violated;
- The range of potential sanctions for the alleged violations; and
- The name(s) of the investigator(s) who have been appointed.

If additional allegations are revealed during the Investigation, the Title IX Coordinator or Deputy will send a revised Notice to the Parties.

## **1. Appointment of Investigator(s)**

Upon receipt of the Formal Complaint, the Title IX Coordinator or Deputy shall appoint one (1) or more Investigators who have specific training and experience investigating allegations of Sexual Misconduct (Investigator(s)). The Investigator(s) may be employees of the College or external Investigator(s) engaged to assist the College in its fact-gathering. The Title IX Coordinator or Deputy may appoint a team of two Investigators, which may include the pairing of an external investigator with a College employee. Any Investigator chosen to conduct the Investigation must be impartial and free of any conflict of interest.

## **2. Investigators' Conflicts of Interest**

A conflict of interest may arise if the Investigator is related to, has a friendship with, or otherwise has had interactions with one of the Parties or witnesses that may compromise the fairness or impartiality of the investigation. In the rare situation in which an actual or perceived conflict of interest arises from the involvement of an Investigator, that conflict must be disclosed to all Parties and any potential or actual conflict must be appropriately addressed.

If a Party has reason to believe that an Investigator for the case has a conflict of interest, the Party should notify the Title IX Coordinator or Deputy immediately via email and provide the reasons why the Party believes there is a conflict of interest. Likewise, an Investigator must promptly disclose any potential conflict of interest the Investigator might have in a particular case. The Title IX Coordinator or Deputy will review the information provided and make a determination regarding whether the Investigator should be replaced with another Investigator.

### **iii. Coordination with Law Enforcement**

At the request of law enforcement, the College may agree to defer its Investigation until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Reporting Party regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Investigation as soon as law enforcement has completed its initial investigation.

### **iv. Investigation**

The Investigation is designed to provide a fair, impartial, and reliable gathering of the facts. All individuals interviewed during the Investigation, including the Parties and any witnesses, will be treated with appropriate sensitivity and respect. The Investigation will safeguard the privacy of the individuals involved as much as possible, consistent with the need for a full assessment of the facts. At the commencement of the Investigation, the Title IX Coordinator or Deputy will provide the Investigator(s) with a copy of the Formal Complaint.

The Investigation ordinarily will include interviews of the Parties and any witnesses who may have relevant information, unless clearly unreasonable or duplicative of information already gathered; a review of any pertinent documents, medical records, and communications; and may include other actions deemed appropriate by the Investigator(s). Interviews will not be recorded.

At the initial interview of the Responding Party and/or in writing within three (3) business days of the initial interview, the Responding Party may provide the Investigators with a response to the allegations, the names (and contact information, if known) of any witnesses to the events in question, and any documentation or communications that the Responding Party believes is pertinent to the Reporting Party's allegations. If a revised Notice is sent to the Parties, the Investigator(s) or the Responding Party may request that the Responding Party be interviewed in relation to the new allegations and/or the Responding Party may provide the Investigator(s) with a response to the new allegations, the names (and contact information, if known) of any witnesses to the events in question, and any documentation

or communications that the Responding Party believes is pertinent to the Reporting Party's new allegations.

If a Party or witness declines to participate in the Investigation and the College is aware of relevant information pertaining to or in the knowledge of that Party, the Title IX Coordinator may present this information to the Investigator.

The Title IX Coordinator, Deputy and/or Investigator(s) shall make every effort to keep the Investigation confidential, although confidentiality cannot be guaranteed. During the Investigation, the Title IX Coordinator, Deputy and Investigator(s) are not permitted to discuss the investigation with anyone except as circumstances warrant on a need-to-know basis. The Investigator(s) may communicate with legal counsel to the College and the Title IX Coordinator or Deputy during the Investigation.

The College will maintain the privacy of all Parties to a complaint under these Procedures, except when it interferes with the College's obligations (1) to fully investigate allegations of violation of the Policy or (2) to notify applicable governmental agencies as may be required by law. Where privacy may not be strictly kept, it will still be tightly controlled on a need-to-know basis and maintained to the extent possible. Breach of confidentiality by the Investigator(s) will result in a permanent removal from the Investigation and may subject the Investigator(s) to disciplinary action.

**v. Prior Sexual History of a Reporting Party Will Not Be Considered Unless Relevant to Consent between the Parties**

In general, a Reporting Party's prior sexual history is not relevant and will not be considered by the Investigator(s). Where a current or previous dating or sexual relationship is alleged between the Parties, and the Responding Party alleges consent, the prior sexual history between the Parties may be considered by the Investigator(s) as relevant to assess the manner and nature of communications regarding consent between the Parties. The mere allegation of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Reporting Party with other individuals is typically not relevant and will not be considered.

**vi. Summary of Investigative Interviews**

After each investigative interview, the Investigator(s) shall prepare a written summary of the interview and shall email a copy of the summary of the interview to the Party or witness who was interviewed as soon as practicable after the interview is conducted. The Party or witness will be given two (2) business days from the date upon which the Investigator(s) send the summary of the interview to provide any comments or additional information via email to the Investigator(s).

If the Party or witness does not provide comments or additional information to the Investigator(s) within this time period, the summary of the interview will be included in the Summary of Evidence without comment from the Party or witness. If the Party or witness provides comments or additional information to the Investigator(s) within this time period, the Investigator(s) shall include the comments and additional information in the Summary of Evidence, as defined below, and may, in the Investigator(s)' discretion, conduct another interview of the Party or witness.

## **vii. Summary of Evidence**

Both Parties will have the opportunity to have notice of, as well as be heard by, the Investigator(s) with regard to any evidence to be considered for or against them. The opportunity to be heard includes, but is not limited to, the opportunity to respond to information received during the course of the Investigation. Both Parties will have the same access to information to be used and considered during the process, and the same opportunity to present names of relevant witnesses and to identify and provide evidence during the process.

At the conclusion of the Investigation, the Investigator(s) will prepare a written summary of the information gathered, including but not limited to the names of the witnesses interviewed, summaries of the information provided by each Party and each witness, and copies of all documents or physical evidence provided to the Investigator(s) (Summary of Evidence). The Title IX Coordinator will review the Summary of Evidence for consistency with College policy and practice, and the College's legal counsel will review the Summary of Evidence for legal sufficiency.

After the legal sufficiency review is complete, the Summary of Evidence will be marked "Confidential" and will be emailed concurrently to each Party via their respective College-assigned e-mail accounts. Parties are required to treat the Summary of Evidence as confidential. Parties may not disseminate the Summary of Evidence, or any part of it, to any other person, except for the Party's advisor and individuals who are consulted to aid in the Party's preparation of a written response or for support through the process. Providing the Summary of Evidence to any other person is a violation of the College's Policy Against Sexual Misconduct and may result in discipline against the Party.

Advisors are also bound by the obligation to maintain the Summary of Evidence confidentially and not disseminate the Summary of Evidence beyond individuals who are consulted to aid in the Party's preparation of a written response or for support for the Party through the process. An advisor's failure to maintain confidentiality of the Summary of Evidence may be grounds to exclude the advisor from further participation in the Formal Resolution process.

### **1. Parties' Response to Summary of Evidence**

All Parties will have five (5) business days after the date the Summary of Evidence is emailed to the Parties to review the Summary of Evidence and all underlying documents. Within those five (5) business days the Parties may submit written comments, additional information in response to, and questions regarding the Summary of Evidence via email to the Title IX Coordinator (Response to Evidence).

If extenuating circumstances warrant an extension, a Party may submit a request for an extension to the Title IX Coordinator via email no later than the original deadline for the Response to Evidence. Such requests will be evaluated on a case-by-case basis. The Title IX Coordinator or Deputy shall email the decision regarding the request for extension to both Parties. If a request for extension is granted to one Party, the other Party will be provided the same amount of additional time to submit their Response to Evidence.

Parties' Response to Evidence should not exceed ten (10) double-spaced pages with a minimum of 12-point font. Each Party may clarify any fact that the Party believes is inaccurate in the Summary of Evidence; request that additional witnesses be interviewed by the Investigator(s); request that a Party or

witness be interviewed again; describe the impact of the case on themselves and/or request specific sanctions, if the Responding Party is found responsible; and/or provide additional documents. If a Party requests that an additional witness be interviewed or that a Party or witness be interviewed again, the Party must provide a statement regarding the information known to the Party or witness and explain the relevance of the information to resolution of the Complaint. If a Party submits documents, the Party must explain the relevance of each document submitted.

## **2. Additional Investigation**

Upon receipt of each Party's Response to Evidence or the expiration of the deadline to submit the Response to Evidence, whichever is earlier, the Title IX Coordinator will submit the Parties' Responses to Evidence that were received to the Investigator(s) for consideration. All information submitted by the Parties in response to the Summary of Evidence will be carefully reviewed by the Investigator(s). The Investigator(s) may conduct additional interviews to the extent reasonable, based on the relevancy and materiality of the statement of information known by a witness.

## **3. Revised Summary of Evidence**

If the Investigator(s) determine that the Summary of Evidence should be revised based on the Parties' Responses to Evidence and any additional investigation that is conducted, the Investigator(s) will prepare a revised Summary of Evidence (Revised Summary of Evidence). This Revised Summary of Evidence will include, but is not limited to, the names of the Parties and/or witnesses interviewed, summaries of the information provided by each Party and each witness, and copies of all documents or physical evidence provided to the Investigator(s). The Title IX Coordinator will review the Revised Summary of Evidence for consistency with College policy and practice, and the College's legal counsel will review the Revised Summary of Evidence for legal sufficiency.

After the legal sufficiency review is complete, the Revised Summary of Evidence will be marked "Confidential" and will be emailed concurrently to each Party via their respective College-assigned e-mail accounts. Parties are required to treat the Revised Summary of Evidence as confidential. Parties may not disseminate the Revised Summary of Evidence, or any part of it, to any other person, except for the Party's advisor and individuals who are consulted to aid in the Party's preparation of a written response or for support through the process. Providing the Revised Summary of Evidence to any other person is a violation of the College's Policy Against Sexual Misconduct and may result in discipline against the Party.

Advisors are also bound by the obligation to maintain the Revised Summary of Evidence confidentially and not disseminate the Revised Summary of Evidence beyond individuals who are consulted to aid in the Party's preparation of a written response or for support for the Party through the process. An advisor's failure to maintain confidentiality of the Revised Summary of Evidence may be grounds to exclude the advisor from further participation in the Formal Resolution process.

### **viii. Outcome and Standard of Proof**

In determining whether the alleged conduct constitutes a violation of the Policy, the Investigator(s) will look at the record of the allegations as a whole and the totality of the circumstances based on the information gathered during the Investigation, including but not limited to, the nature of the behavior, the particular facts of the case, the nature of the relationship and interactions between the Parties, and the context in which the alleged conduct occurred. This standard will be applied from the perspective of a reasonable person within the College community.

The standard of proof in all Sexual Misconduct cases initiated under the Policy shall be “preponderance of the evidence” (i.e. that it is more likely than not that the Responding Party is responsible for violation(s) of the Policy).

The Investigator(s) will submit a written decision to the Title IX Coordinator or Deputy, including, but not limited to: (1) a statement of the findings of fact concerning the alleged events, (2) the evidence relied upon in rendering the findings of fact, and (3) a determination of whether the conduct violated the Policy (Outcome). If the Responding Party is found responsible for violation(s) of the Policy, the Investigator(s) will be provided with the Responding Party’s disciplinary record and will issue sanctions in writing (Sanctions), as set forth below.

The Title IX Coordinator will review the Outcome and Sanctions for consistency with College policy and practice, and the College’s legal counsel will review the Outcome for legal sufficiency. The Title IX Coordinator or Deputy will include in the Outcome a notification of the Parties’ right to appeal and the name of the Appeal Officer who has been appointed.

After the legal sufficiency review is complete, the Title IX Coordinator or Deputy will email the Outcome concurrently to each Party via their respective College-assigned e-mail accounts. If the Responding Party is found responsible, the Title IX Coordinator or Deputy will email the Sanctions to the Responding Party. The Reporting Party will be informed of any sanctions to the extent consistent with FERPA and other applicable law. The Student Conduct Officer will implement the Sanctions.

If neither Party submits an appeal within the applicable time limit, the Outcome and Sanctions will become final on the day immediately following the expiration of the time for filing an appeal.

### **ix. Sanctions**

If the Responding Party is found responsible for a violation of the Policy, the Title IX Coordinator or Deputy will provide the Investigator(s) with a copy of the Responding Party’s disciplinary history, which may be considered by the Investigator(s) in determining a sanction(s). Disciplinary records related to instances where the Responding Party has previously been found responsible for Sexual Misconduct are presumed to be relevant by the Investigator(s) to the assignment of a sanction.

Sanctions that may be imposed under this Policy include, but are not limited to, warning, restriction, work sanctions, educational sanctions, mandated assessments, disciplinary probation, housing contract revocation, disciplinary suspension, and expulsion. Sanctions may be issued individually or a combination of sanctions may be imposed. In general:

- Any student who is determined to have committed non-consensual sexual intercourse may receive a sanction ranging from suspension to expulsion.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from warning to expulsion.

The Investigator(s) may deviate from the range of recommended sanctions, based upon a full consideration of the following factors:

- The Responding Party's prior discipline history;
- How the College has sanctioned similar incidents in the past;
- The nature and violence of the conduct at issue;
- The impact of the conduct on the Reporting Party;
- The impact of the conduct on the community, its members, or its property;
- Whether the Responding Party has accepted responsibility for the Responding Party's actions;
- Whether the Responding Party is reasonably likely to engage in the conduct in the future;
- The need to deter similar conduct by others; and/or
- Any other mitigating or aggravating circumstances, including the College's values.

The Investigator(s), in consultation with the Title IX Coordinator or Deputy, may also consider restorative justice outcomes that, taking into account the safety of the community as a whole, allow a Responding Party to learn about the origins of the Responding Party's behavior, the Responding Party's responsibility for this behavior, and how the Responding Party can change this behavior.

In the course of preparing the Outcome, the Investigator(s) will notify the Title IX Coordinator or Deputy via email if the Investigator(s) have determined that the Responding Party(ies) is responsible for one (1) or more Policy violations. The Title IX Coordinator or Deputy will then provide the Investigator(s) with the Responding Party(ies)' disciplinary record.

#### **x. Timeline**

The Title IX Coordinator or Deputy will keep the parties informed of the status of the College's resolution of the report throughout the process. The Investigators will strive to complete the Investigation within twenty to twenty-five (20-25) business days of the Notice of Investigation. The Investigators will strive to complete the Outcome within ten (10) business days of receipt of Parties' Responses to Evidence.

The Formal Resolution generally shall be completed within sixty (60) days of the Title IX Coordinator's or Deputy's receipt of the initial report of the allegations of Sexual Misconduct. If the Formal Resolution cannot be completed within sixty (60) days of the initial report, the Reporting Party and Responding Party(ies) will be notified via email of reasons for delay.

## **VIII. Appeals**

### **a. Appeal Officer**

Either Party may appeal the Outcome, including the finding of responsible or not responsible and/or the sanctions, via email to the Title IX Coordinator. The appeal will be conducted in an impartial manner by an impartial decision-maker (the Appeal Officer). The Title IX Coordinator will appoint an Appeal Officer from a pool of external appeal officers with specific training and experience in Title IX matters.

### **b. Conflicts of Interest**

A conflict of interest may arise if the Appeal Officer is related to, has a friendship with, or otherwise has had interactions with one of the parties or witnesses that may compromise the fairness or impartiality of the investigation. In the rare situation in which an actual or perceived conflict of interest arises from the involvement of an Appeal Officer, that conflict must be disclosed to all Parties and any potential or actual conflict must be appropriately addressed.

If a Party has reason to believe that an Appeal Officer for the case has a conflict of interest, the Party should notify the Title IX Coordinator or Deputy immediately via email and provide the reasons why the Party believes there is a conflict of interest. Likewise, an Appeal Officer must promptly disclose any potential conflict of interest the Appeal Officer might have in a particular case. The Title IX Coordinator or Deputy will review the information provided and make a determination regarding whether the Appeal Officer should be replaced with another Appeal Officer.

### **c. Submission of Appeal**

#### **i. Time to Submit an Appeal**

Appeals must be submitted to the Title IX Coordinator or Deputy via email within five (5) business days of the date the Outcome was sent via email to the Parties. Upon receipt of an appeal, the Title IX Coordinator or Deputy will send a copy of the appeal to the non-appealing Party within one (1) business day of the Title IX Coordinator or Deputy's receipt of the appeal. The non-appealing party will have three (3) business days to submit a response to the appeal to the Title IX Coordinator or Deputy.

In the event that an extenuating circumstance may warrant an extension, a request for an extension must be submitted to the Title IX Coordinator via email no later than the original deadline for the Appeal. Such requests will be evaluated on a case-by-case basis. The Title IX Coordinator or Deputy shall email the decision regarding the request for extension to both Parties. If a request for extension is granted to the appealing Party, the non-appealing Party will be provided the same amount of additional time to submit the Response to the Appeal. Appeals or responses submitted after the deadlines without an extension having been granted by the Title IX Coordinator or Deputy will be denied.

#### **ii. Submission of the Appeal to the Appeals Officer**

The Title IX Coordinator or Deputy shall email a copy of the Outcome, the appeal and any response to the appeal to the designated Appeal Officer within one (1) business day of the receipt of the response or



the date upon which the response was due, whichever is earlier. The Appeal Officer shall confirm receipt of this information via email to the Title IX Coordinator or Deputy. The Title IX Coordinator or Deputy will email a copy of the response to the appeal, if any, to the appealing Party.

#### **d. Requirements for Appeal and Response to Appeal**

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for appeal, all relevant information to substantiate the basis for the appeal, and appellant's desired outcome. The appeal shall not exceed 10 double-spaced pages with a minimum 12-point font. Mere dissatisfaction with the Outcome is not a valid basis for appeal.

Grounds for appeal are limited to the following:

- Specified deviations from the prescribed procedures of the Policy or these Student Procedures that resulted in significant prejudice to the appealing Party. Minor deviations from designated procedures will not form the basis for sustaining an appeal.
- New or significant information that could not reasonably be made available at the time of the original investigation.
- The sanction imposed was not appropriate to the violation for which the Responding Party was found responsible.

A response to an appeal shall consist of a plain, concise, and complete written statement outlining the reasons that the appeals should be denied, all relevant information to substantiate the basis for the response, and non-appealing Party's desired outcome. The response shall not exceed 10 double-spaced pages with a minimum 12-point font.

If both Parties appeal, each party is permitted to file a response to the other Party's appeal, and both appeals will be considered by the Appeal Officer in one proceeding.

#### **e. Exclusion of Improper Information Submitted on Appeal**

The Appeal Officer may exclude any information submitted by the appealing or non-appealing Party if it is not relevant or material to one of the specified grounds for appeal. If the Appeal Officer excludes information submitted on appeal, the Appeal Officer shall state the basis for exclusion of the information in the Appeal Officer's written decision.

#### **f. Burden of Proof**

In any request for an appeal, the burden of proof lies with the appealing Party, as the original Outcome (and Sanction, if assigned) are presumed to have been decided reasonably and appropriately.

The Appeal Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is based on one or more of the three grounds. If the Appeal Officer determines that the appeal is not

timely or is not based on one of the permitted grounds, the appeal will be denied.

An appeal is not an opportunity for the Appeal Officer to substitute the Appeal Officer's own judgment for that of the Investigator(s) merely because the Appeal Officer disagrees with the Outcome, findings and/or Sanctions. Appeal decisions are to be deferential to the original Investigator(s), making changes to the finding only where there is clear error.

#### **g. Outcome of Appeal**

The Appeal Officer may affirm or alter the Outcome and/or Sanctions, depending on the basis of the requested appeal:

- If the appeal is based on procedural error, the Appeal Officer may return the Formal Complaint to the Investigator(s) with instructions to cure the error, or, in rare cases where the error cannot be cured, the Appeal Officer may ask that a new investigation occur. If a new investigation is ordered, the Title IX Coordinator or Deputy will appoint different Investigator(s) to conduct a new investigation in accordance with these Student Procedures. The new investigation shall be expedited to the maximum extent possible while ensuring that a thorough and complete investigation is conducted.
- In the case of new and relevant information, the Appeal Officer may remand the case to the original Investigator(s) to assess the weight and effect of the new information, conduct any additional investigation as appropriate, and render a revised report after considering the new facts.
- If an appeal is based on an assertion that an imposed Sanction was not appropriate to the violation for which the Responding Party was found responsible, the Appeal Officer may affirm or alter the Sanction.

The Appeal Officer will render a written decision on the appeal (Appeal Decision) and send it to the Title IX Coordinator or Deputy within fifteen (15) business days from the date that the Title IX Coordinator or Deputy submits all of the appeal documents to the Appeal Officer. This time frame may be extended by the Title IX Coordinator or Deputy as necessary to ensure the integrity and completeness of the appeal process. The Title IX Coordinator will notify the Parties if additional time is required to complete the appeal process.

Appeal Decisions are final, unless the case is remanded. If the Appeal Officer remands the case, the Appeal Decision will state whether the Investigator(s) must issue a Revised Summary of Evidence, Outcome and/or Sanction, as appropriate to the findings on appeal. Any additional investigation and revision of the Summary of Evidence, Outcome and/or Sanction should be completed promptly as practicable. If the case is remanded, a Party may appeal only the portions of the Outcome that were changed on remand.

The Title IX Coordinator will review the Appeal Decision for consistency with College policy and practice, and the College's legal counsel will review the Appeal Decision for legal sufficiency.

After the legal sufficiency review is complete, the Title IX Coordinator or Deputy will email the Appeal  
*Revisions effective July 1, 2016 – updated July 1, 2018*  
*Revisions approved by Board May 13, 2016*

Decision concurrently to each Party via their respective College-assigned e-mail accounts.

#### **h. Sanctions during Appeal**

Sanctions will typically be stayed pending the outcome of any appeal process. If a Responding Party is suspended on an interim basis prior to the conclusion of the Investigation and is suspended or expelled as a result of the Investigation, the interim suspension will continue pending the outcome of any appeal.

### **IX. Records**

These procedures are entirely administrative in nature and are not considered legal proceedings. Parties may not make audio or video recordings of interviews, meetings or any part of the proceedings.

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Initial Assessment, Informal Resolution, or Formal Resolution for at least seven (7) years. Complaints resolved by means of Initial Assessment or Informal Resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

If the Responding Party is a student and is found responsible for a violation of the Policy through the Formal Resolution process, the Title IX Coordinator will submit a copy of the Outcome and Sanctions to the Student Conduct Officer to be placed in the student's disciplinary record. Such records shall be used in reviewing any further conduct or issuing sanctions and shall remain a part of a student's conduct record.

Student conduct records will be retained in the Dean of Students Office for seven (7) years from when the student graduates or leaves the College due to death, withdrawal, or academic dismissal. Student conduct records of cases resulting in suspension, expulsion, or organizational deactivation may be retained for longer periods of time or indefinitely at the discretion of the Dean of Students. Further questions about record retention should be directed to the Dean of Students Office.

### **X. The Family Education Rights and Privacy Act**

The Family Education Rights and Privacy Act (FERPA) is a federal privacy law that concerns student education records. Student conduct records, including student conduct records that are maintained in the course of a Sexual Misconduct proceeding, are education records under FERPA. Generally, FERPA prohibits disclosure of student conduct records, absent a student's consent. There are a number of exceptions, however, that may subject student conduct records to disclosure in the course of or in the aftermath of a Sexual Misconduct investigation:

#### **a. Disclosure to Victim in Crime of Violence or Non-Forcible Sex Offense**

FERPA permits disclosure of the outcome of a student conduct investigation to the victim of a crime of violence or non-forcible sex offense. Where the alleged Sexual Misconduct relates to a crime of violence or a non-forcible sex offense, the College will disclose the outcome of the hearing and any sanctions to the victim, regardless of whether or not the behavior was found to have violated College's Policy against Sexual Misconduct.

**b. Disclosure to Others of Crime of Violence or Non-Forcible Sex Offense**

FERPA permits disclosure of the outcome of a student conduct investigation to anyone if (1) the alleged Sexual Misconduct relates to a crime of violence or non-forcible sex offense; (2) the Responding Party was found to have violated this Policy; (3) the alleged instance of Sexual Misconduct occurred after October 7, 1998; and (4) the names of non-party students, such as witnesses, have been redacted.

**c. Transfer Students**

FERPA permits disclosure of a student's education records to officials of another institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

**d. Disclosure Where the College is a Party in Litigation**

FERPA permits disclosure of education records when a student initiates legal action against the College and the education records are relevant to the College's defense.

**e. Subpoenas and Court Orders**

FERPA permits disclosure of education records when the party seeking disclosure presents a lawfully issued subpoena or court order. Student conduct records are discoverable in criminal and civil litigation and must be disclosed in their entirety pursuant to a lawfully issued subpoena or court order.

**f. FERPA Right to Inspect and Review**

FERPA also gives students a limited right to inspect and review their own education records. Any document or recording maintained in a student conduct proceeding that is directly related to a student is an education record, subject to inspection and review upon request. Practically speaking, if a student who is a Party or witness in a Sexual Misconduct proceeding gives any written or recorded statement, this statement will be made available, to the extent required by law, and to the extent that it relates to any student who invokes the right to inspect and review the student's education records.

**XI. Conflicts with the Policy and Procedures**

With the exception of the College Bylaws, to the extent that the Policy or these Student Procedures conflict with any other College policy, procedure, handbook, faculty or employee bylaw, agreement, or process, the Policy and these Student Procedures shall prevail.

If a Reporting Party alleges Sexual Misconduct along with alleged violations of other College policies and procedures, including but not limited to the Student Code of Conduct, Employee Handbook, Faculty Bylaws or Faculty Handbook, all allegations will be investigated and adjudicated in accordance with the Policy and these Student Procedures. The Title IX Coordinator or Deputy may pair an investigator without Title IX training with an investigator with Title IX training to investigate allegations that do not fall within the scope of the Policy.