

## **St. Mary's College of Maryland Grievance Process to Resolve Complaints of Sexual Harassment**

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#### **I. Overview**

This Grievance Process to Resolve Complaints of Sexual Harassment (the "Procedures") provide a process for the prompt and equitable investigation and adjudication of complaints of Title IX Sexual Harassment, Other Sexual Harassment, and Retaliation (together, "Prohibited Conduct") as defined in the Policy against Sexual Harassment (the "Policy") of St. Mary's College of Maryland (the "College" or "SMCM"). These Procedures apply to address complaints of Prohibited Conduct against students, employees, and contractors at the College. The Procedures ensure the College's compliance with federal and State law as well as the Policy.

Any person alleging Sexual Harassment against one of the College's students, employees, or contractors 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 Prohibited Conduct against a student, employee or contractor under these Procedures.

These Procedures are effective as of August 14, 2020, and replace and supersede any prior procedures related to complaints, reports, investigation or adjudication of any allegation of Prohibited Conduct against one of the College's students, staff or faculty.

Any individual who wishes to make a report of Prohibited Conduct 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.

When the College has actual knowledge of harassment, the Title IX Coordinator will promptly contact the person who allegedly experienced Prohibited Conduct (the complainant) and explain, among other things, the process for filing a formal complaint. The Title IX Coordinator will also discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, and inform the complainant of the availability of supportive measures with or without the filing of a formal complaint.

Once the College knows of possible Prohibited Conduct, it will take immediate and appropriate action to investigate the report or otherwise determine what occurred. This obligation applies to any allegations of Prohibited Conduct 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.

**a. Prompt and Equitable Proceedings**

These Procedures establish reasonably prompt time frames for the conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes. In some circumstances, there may be temporary delays of the grievance process, or time frames may be extended for good cause. In those cases, the complainant and the person who allegedly engaged in the Prohibited Conduct (the respondent) will receive written notice of the delay or extension and the reasons for the action. "Good cause" may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

These Procedures provide for fair and impartial proceedings. As such, the Procedures require the objective evaluation of relevant evidence and provide that any credibility determination may not be based on a person's status as a complainant, respondent, or witness. Anyone who is designated as a Title IX Coordinator, investigator, decision-maker, or someone who facilitates an informal resolution process (together, "Title IX Personnel") must not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent. Furthermore, Title IX Personnel must receive training on, among other things, how to serve impartially, including by avoiding prejudgment of

the facts at issue, conflicts of interest, and bias.

#### **b. Procedural Overview**

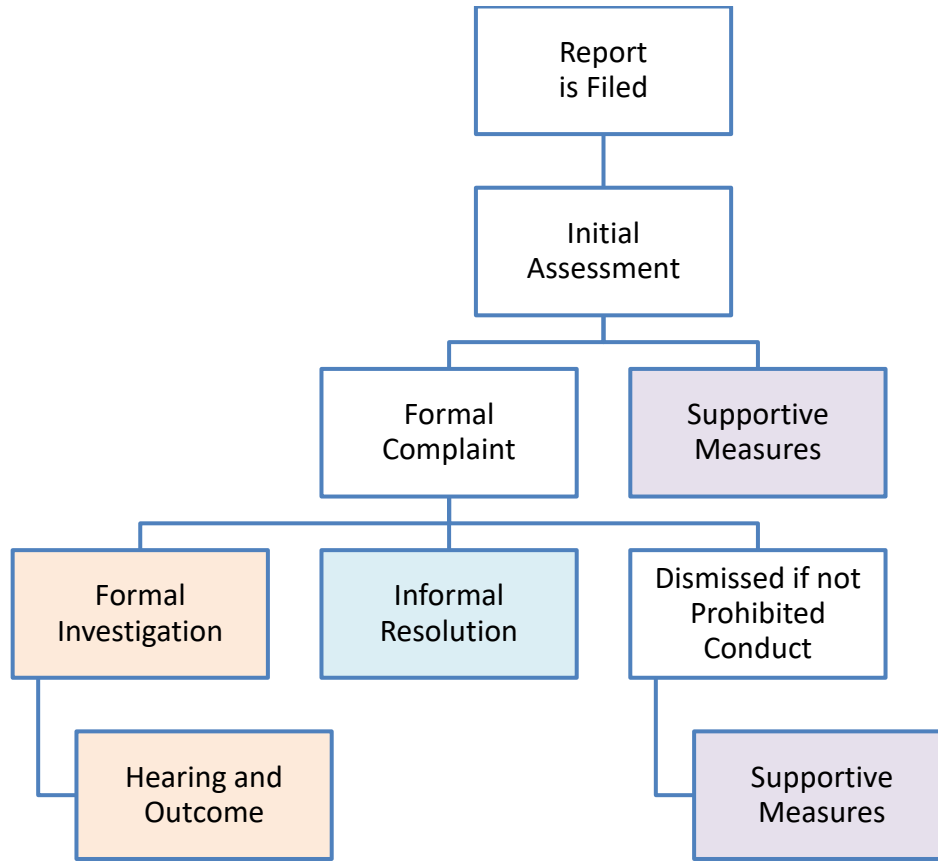
In every instance when a report is received under the Policy, the Title IX Coordinator or Deputy will conduct an **Initial Assessment** to ensure the safety of the complainant and to determine the nature of the allegations against the respondent. At the conclusion of the Initial Assessment, the Title IX Coordinator or Deputy will ascertain whether the complainant wishes to file a formal complaint.

If the complainant files a **Formal Complaint**, the Title IX Coordinator or Deputy will determine if the allegations constitute Title IX Sexual Harassment (sexual harassment, sexual assault, dating violence, domestic violence, and stalking) or Other Sexual Harassment. The Title IX Coordinator or Deputy will notify both parties of the reasons for the designation decision. The Title IX Coordinator or Deputy may then initiate a **Formal Investigation**, including a live hearing, and implement supportive measures. The College may implement an **Informal Resolution** after a formal complaint has been filed and before a determination of responsibility has been made.

If the allegations in the Formal Complaint do not qualify as Prohibited Conduct (either Title IX Sexual Harassment or Other Sexual Harassment), the Formal Complaint will be dismissed.

If the complainant does not file a Formal Complaint, the Title IX Coordinator or Deputy may implement supportive measures on the complainant's behalf.

Each of these steps is discussed in more detail below. The chart on the following page also summarizes this process.



## II. Initial Assessment

The first step of the Initial Assessment will usually be a preliminary meeting between the complainant 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 complainant with information about resources, procedural options and interim measures. At the preliminary meeting, the Title IX Coordinator or Deputy will:

- Assess the nature and circumstances of the allegations;
- Address immediate physical safety and emotional well-being needs of the complainant;
- Notify the complainant of the right to contact law enforcement;
- Offer assistance and transportation to the complainant to see medical treatment;
- Inform the complainant of the importance of preservation of evidence;
- Provide the complainant with information about on- and off-campus resources;
- Provide the complainant with information about Supportive Measures (defined below);

- Explain procedural options, including Informal Resolution, if applicable, and Formal Resolution;
- Inform the complainant of their right to have an advisor, advocate, and/or support person present during any meeting throughout the process;
- Assess for pattern evidence or other similar conduct by the respondent; and
- Explain the College’s Policy prohibiting retaliation.

During the Initial Assessment, the Title IX Coordinator or Deputy will determine the risk of potential 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 complainant 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 Prohibited Conduct. If so, the Title IX Coordinator or Deputy will ascertain whether the complainant wishes to pursue an Informal Resolution or Formal Resolution.

If the complainant wishes to pursue a Formal Resolution, the Title IX Coordinator or Deputy will work with the complainant to prepare a Formal Complaint to begin an Investigation.

If the complainant wishes to pursue an Informal Resolution and the allegations of Prohibited Conduct do not involve allegations of sexual assault, the Title IX Coordinator or Deputy will contact the respondent to begin the Informal Resolution process. If the complainant wishes to pursue an Informal Resolution and the allegations involve sexual assault, or allegations of Title IX Sexual Harassment against an employee, the Title IX Coordinator will inform the complainant 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 complainant supportive measures that do not impact the respondent. The Title IX Coordinator or Deputy will confirm the complainant’s desired process via email.

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

### **III. Complainant’s Request Not to Pursue Investigation or Adjudication**

A complainant 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 complainant may also decline to respond to requests from the Title IX Coordinator or Deputy to discuss the allegations of Prohibited Conduct.

If the complainant makes one of these requests or does not respond to requests to discuss the allegations of Prohibited Conduct, 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 complainant and members of the campus community. The Title IX Coordinator or Deputy will inform the complainant that the College's ability to investigate, discipline the respondent or otherwise respond to the report may be limited.

The Title IX Coordinator or Deputy will balance the complainant'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 complainant 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 complainant and respondent;
- The rights of the respondent to receive notice before disciplinary action is sought;
- Circumstances that suggest there is an increased risk of the respondent committing additional acts of sexual violence or other violence (e.g., whether there have been other complaints or reports of harassment about the same respondent, whether the respondent has a history of arrests or records from a prior school indicating a history of violence, whether the respondent threatened further sexual violence or other violence against the complainant or others, and whether the sexual violence was committed by multiple respondents);
- Circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the complainant'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 Associate Vice President 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 complainant, the Title IX Coordinator or Deputy will inform the complainant via email about the College's chosen course of action.

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

The College understands that the complainant, respondent, and witnesses involved in any Prohibited Conduct 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 complainant, respondent, 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 supportive 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 <http://www.smcm.edu/title-ix/>.

#### **V. Supportive Measures**

These Procedures treat complainants and respondents equitably (1) by offering supportive measures to the complainant and providing remedies to a complainant, and (2) by following a grievance process that complies with the Final Title IX Regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

More information about the range of supportive measures available to complainants and respondents may be found in the Policy, available at <http://www.smcm.edu/title-ix/>.

#### **VI. Attorneys, Advocates and Personal Supporters**

The College will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

The College will not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. However, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

The Parties have the right to be assisted by an attorney or advocate supervised by an attorney (both referred to herein as “advocate”), as well as a personal supporter of their choice (“supporter”) through the investigation and adjudication of a complaint of Prohibited Conduct. Advocates may not be a witness or other party in the proceeding. Advocates and supporters may accompany the student to any meeting or interview. Parties may not have more than two people, including a supporter and advocate, at any meeting or interview.

Advocates and supporters have no speaking role in a meeting or interview and are not permitted to ask or answer questions during those sessions. All communication regarding the resolution process will be directed to the student. The College will only respond to communications received from the student. An advocate will not be permitted to communicate on the student’s behalf.

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

#### **a. Advocate Roles**

In addition to attending meetings and interviews, advocates are permitted to assist parties through:

- Private consultations with the party during meeting and interviews;
- Providing advice to the party in a non-disruptive manner (such as communicating in writing);
- Assisting a party’s exercise of any right during the investigative and adjudicatory process.

If a party wishes to have an advocate accompany the party to a meeting or interview, parties are asked to give notice to the Title IX Coordinator or Deputy at least twenty-four (24) hours prior to any meeting or interview that an advocate will attend. Students should select an advocate whose schedule allows attendance at any meeting or interview. Parties may select and retain an advocate at any time before the conclusion of a formal Prohibited Conduct complaint is resolved.

As set forth in more detail in the hearing procedures below (sec. n), only advocates/advisors – not parties – may conduct cross-examination of parties or witnesses.

#### **b. MHEC-Provided Attorneys**

The Maryland Higher Education Commission (MHEC) provides for licensed attorneys who have indicated

that they will represent complainants or respondents (who are current students or were students at the time of the underlying alleged Prohibited Conduct), in Title IX proceedings on a pro bono basis or for reduced legal fees. Students who seek representation from those attorneys are not responsible for the cost of legal services provided. Attorneys representing students in Title IX proceedings are reimbursed directly from MHEC's Legal Representation Fund for Title IX Proceedings, subject to the availability of funding.

Parties who seek representation from an MHEC-identified attorney may visit the MHEC webpage: <https://mhec.maryland.gov/Pages/Title-IX-Campus-Sexual-Assault-Proceedings.aspx>.

The list of attorneys available through MHEC may be found here: <https://mhec.maryland.gov/Pages/Title-IX-Campus-Sexual-Assault-Proceedings---Attorney-List.aspx>.

Students may be represented by private counsel or through other legal service agencies or organizations. If a student chooses to be represented by an attorney that is not on MHEC's list of attorneys (described above), MHEC shall pay fees to the attorney selected by the student that are equivalent to those paid to attorneys under civil legal services programs administered by the Maryland Legal Services Corporation.

## **VII. Formal Complaint**

A "formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of Prohibited Conduct. The formal complaint is a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the investigation.

At the time of filing a formal complaint, a complainant must be participating in, or attempting to participate in, the College's education program or activity.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail, or any additional method designated by the College.

A person wishing to submit a formal complaint should use the College's Sexual Harassment Formal Complaint Form, which is available at [www.smcm.edu/title-ix/](http://www.smcm.edu/title-ix/). Hard copies are also available in the Office of Title IX Compliance and Training.

The formal complaint should set forth the details of the complainant's allegations, including, to the extent known:

- The names and contact information of the respondent(s),
- The names and contact information of any witnesses to the incident,

- 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.

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

If the complainant chooses not to cooperate with the investigation, the Title IX Coordinator or Deputy may go forward with these Procedures, as required, without the complainant’s participation.

A complainant 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 complainant may supplement the formal complaint with additional information during the Investigation.

**a. Notice Following the Formal Complaint**

Upon receipt of a formal complaint, the College will promptly send written notice to known parties of the following:

- The grievance process, including any informal process.
- The allegations of Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. “Sufficient details” include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct (including the College’s decision of whether to designate the alleged Prohibited Conduct as Title IX Sexual Harassment or Other Sexual Harassment), and the date and location of the alleged incident, if known.
- The College’s decision to proceed with the resolution process or dismiss the Formal Complaint as described below.
- The parties’ rights to appeal the designation and/or dismissal decision.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- The Code of Conduct provisions that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

In order to proceed with a Formal Complaint, the College is required to inform the respondent of the complainant's identity (but not other personally identifiable information).

If the College decides to investigate additional allegations that are not included in the original notice, the College will provide notice of the additional allegations to the parties.

#### **b. Dismissal of Formal Complaint**

Federal Title IX regulations require that the College dismiss a Formal Complaint of sexual harassment if the conduct alleged:

- Would not constitute Title IX Sexual Harassment, even if proved;
- Did not occur in the College's education program or activity; or
- Does not fall within the College's jurisdiction.

Even if the College must dismiss a Formal Complaint as required by the Federal Title IX regulations above, the College may still investigate the allegations if the alleged conduct, if proved, constitutes Other Sexual Harassment as defined in the College's policy. In those instances, having designated the conduct as Other Sexual Harassment, the College may still investigate and adjudicate the alleged conduct under the same procedures outlined herein.

The College may dismiss any formal complaint, or any allegations therein, if any of the following occur during the investigation or hearing:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- A respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.

If the reported conduct does not constitute Title IX Sexual Harassment or Other Sexual Harassment, if proved, the College will assess the Formal Complaint to determine if it should be referred to the Dean of Students to assess under the Code of Conduct and/or applicable handbook.

If a formal complaint is dismissed, the College will promptly send written notice of the dismissal and the reason(s) therefor to the parties simultaneously, including information on how to appeal this determination.

**c. Consolidation of Formal Complaints**

The College may consolidate formal complaints as to allegations of Prohibited Conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

**VIII. Resolution**

There are two avenues for resolution of allegations of Prohibited Conduct: 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:

<b>Informal Resolution</b>	<b>Formal Resolution</b>
A process, such as mediation, that does not involve a full investigation and adjudication	Process by which Investigator(s) gather information and then separate hearing officer(s) determine if the respondent should be held responsible for a Policy violation
A voluntary process that becomes available after a complainant files a formal complaint	Involves a live hearing with cross-examination
Not available for allegations of sexual assault or allegations of Title IX Sexual Harassment against an employee	If a respondent is found responsible, the hearing officer(s) issue disciplinary sanctions, up to and including expulsion for students and termination for employees
A complainant does not waive their right to a formal investigation and adjudication	

**IX. Informal Resolution**

An informal resolution is a process, such as mediation, that does not involve a full investigation and adjudication of allegations of Prohibited Conduct.

The College does not require the parties to participate in an informal resolution process. There must be a formal complaint on file before the College can offer an informal resolution. The College may facilitate an informal resolution at any time prior to reaching a determination regarding the

responsibility.

In cases of informal resolution, the College will provide 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 an informal 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;

The College will obtain the parties' voluntary, written consent to the informal resolution process.

The College does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

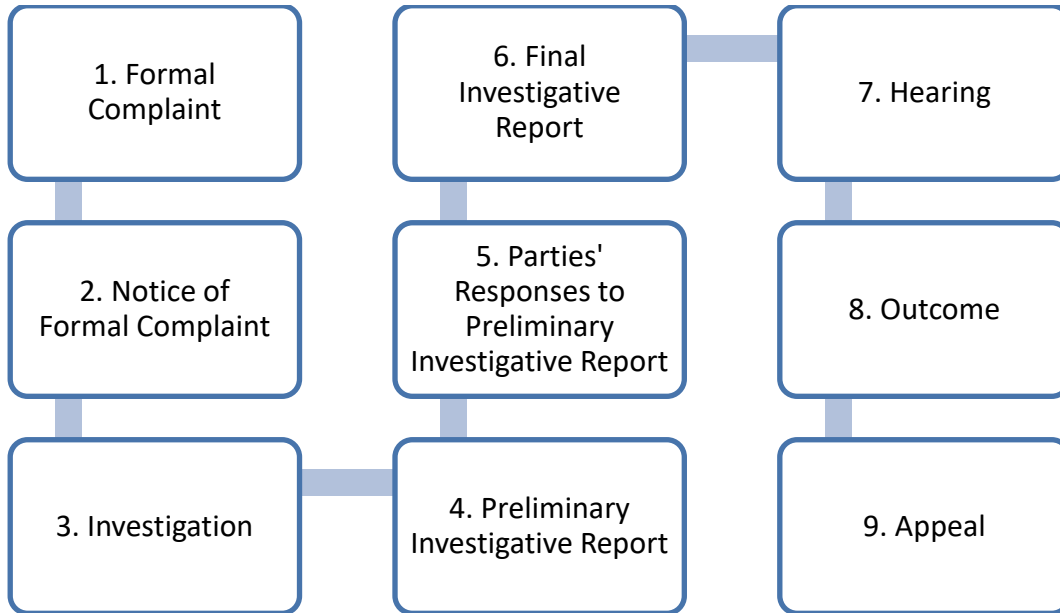
The College does not require a complainant to waive the right to an investigation and adjudication of formal complaints of Prohibited Conduct as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

An Informal Resolution might include, but is not limited to, non-disciplinary remedies such as:

- Implementing agreed upon supportive measures;
- Providing training or counseling to an individual or group;
- Having an informal discussion with the respondent;
- Requesting a written apology from the respondent;
- 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.

**X. Formal Resolution**

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



**a. Confidentiality**

The formal investigation does not restrict the ability of either party to discuss the allegations or gather and present relevant evidence.

The College will maintain the confidentiality of any supportive measures provided to the parties, to the extent that maintaining confidentiality would not impair the College’s ability to provide measures.

The College will maintain the confidentiality of the identity of anyone who has made a report or complaint of sex harassment or discrimination, anyone who has been reported as perpetrator, any respondent, and any witness, except as permitted by FERPA or required by law or to carry out the purposes of the Policy and Procedures.

**b. Standard of Proof**

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

the Policy). The same standard applies to all formal complaints, against students and employees.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

### **c. 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 Prohibited Conduct (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.

#### **1. 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 complainant or respondent 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.

### **d. 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 complainant 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.

### **e. 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.

Throughout the investigation and adjudication process, the College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

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.

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.

**f. Evidence Protected by Privilege**

Under these Procedures, the College does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived it.

**g. Sexual History or Behavior**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) the questions and evidence concern specific incidents of the complainant's prior

sexual behavior with respect to the respondent and are offered to prove consent.

In general, a 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 respondent 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 a party with other individuals is typically not relevant and will not be considered, except to:

- Prove the source of injury;
- Prove prior sexual misconduct;
- Support a claim that a party has an ulterior motive; or
- Impeach a party's credibility after that party has put his or her own prior sexual conduct at issue.

#### **h. Health and Mental Health History**

The College will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in their professional capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so.

#### **i. 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 Investigative Report 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 Investigative Report, as defined below, and may, in the Investigator(s)' discretion, conduct another interview of the Party or witness.

#### **j. Preliminary Investigative Report**

At the conclusion of the initial 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) (the “Preliminary Investigative Report”).

The College will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. This includes any evidence upon which the College does **not** intend to rely in reaching a determination regarding responsibility. This also includes inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

The College will send the Preliminary Investigative Report to each party and the party’s advisor, if any. Each party will have ten (10) days to submit a response, which the Investigators will consider prior to the completion of the investigative report (the Response to the Preliminary Investigative Report).

**k. Additional Investigation**

Upon receipt of each Party’s Response to Preliminary Investigative Report or the expiration of the deadline to submit the Response to Preliminary Investigative Report, whichever is earlier, the Title IX Coordinator will submit the Parties’ Responses to Preliminary Investigative Report for the Investigator(s)’ consideration. Parties will receive copies of the same. The Investigator(s) will carefully review all of the information submitted by the Parties in response to the Preliminary Investigative Report. 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.

**l. Final Investigative Report**

After the Investigator(s) review the Responses to the Preliminary Investigative Report and conduct any additional investigation, the College will prepare the final investigative report (the “Final Investigative Report”). The Final Investigative Report will fairly summarize relevant evidence. The College will send the Final Investigative Report to the party and the party’s advisor, if any, ten (10) days prior to the hearing. The College will send the investigative report in an electronic format or a hard copy to the parties’ and the hearing officer(s).

**m. Live Hearing**

The College will provide a live hearing cross-examination before hearing officer(s), who will determine the outcome, for the resolution of formal complaints. Hearing officer(s) may be College faculty or staff members with appropriate expertise and training, or may be external Title IX professionals appointed for this purpose. Hearing officer(s) must be unbiased and without any conflicts of interest.

Live hearings may be conducted with all parties physically present in the same geographic location. Alternatively, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the person answering questions.

The College will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

At the hearing, all of the evidence that has been subject to the parties' inspection and review will be available to give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

The College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

#### **n. Hearing Procedures**

- a. Written notice of the specific charges and a hearing date are provided to the Parties at least ten (10) days in advance of the Hearing. Hearing dates are scheduled in consultation with the Parties whenever possible.
- b. If a Party does not have an Advisor present at the Hearing, the College will provide one free of charge for the purpose of conducting cross-examination on behalf of that Party. When able, Parties must notify the Title IX Coordinator or designee at least 48 hours prior to the hearing if an Advisor is needed from the College.
- c. The College will notify all witnesses interviewed during the investigation of the date and time of the Hearing. The Hearing Officer may also request the presence of witnesses.
- d. The Hearing Officer may conduct the Hearing with all Parties and witnesses physically present in the same geographic location or, with any or all Parties, witnesses, and other participants present at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- e. At either Party's request, the College will provide the Parties with separate rooms (including separate virtual rooms if the Hearing is held virtually) and use technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the witness who is answering a question.
- f. All Hearings are closed to the public.

- g. Hearings will be recorded or transcribed by the College. No other recordings will be permitted. Recordings and transcripts are maintained by the College. Parties may submit a written request to inspect and review the recording or transcript.
- h. All evidence subject to the Parties' inspection and review will be available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination.
- i. The Investigator(s) will summarize the *Final Investigation Report* for the record.
- j. Each Party may provide a brief opening statement.
- k. The Hearing Officer may ask questions of the Investigator(s) and may permit the Parties' Advisors to do the same.
- l. The Hearing Officer may ask questions of the Parties before cross-examination by the other Party's Advisor.
- m. Each Party's Advisor will be provided an opportunity to cross-examine the other Party and any witnesses. Questioning will be conducted directly, orally and in real time by the Party's Advisor only. Parties may not question each other or witnesses directly.
- n. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. All relevant questions and follow-up questions, including those challenging the credibility of Parties and witnesses, will be allowed.
- o. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence:
  - a. Are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  - b. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- p. Questions and evidence about the Respondent's prior sexual history with an individual other than a Party to the proceedings may only be considered if the evidence:
  - a. Prove the source of the injury;
  - b. Proves prior sexual misconduct;

- c. Supports a claim that a Party has an ulterior motive; or
- d. Impeaches a Party's credibility after that Party has put their own prior sexual conduct in issue.
  
- q. The Hearing Officer may not consider a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the College obtains that Party's voluntary, written consent to do so.
  
- r. The Hearing Officer may not consider any questions or evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.
  
- s. The Hearing Officer may not consider questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
  
- t. The Hearing Officer may permit each Party to make a brief closing statement.

#### **i. Decision or Outcome**

The hearing officer(s), who cannot be the same as the Title IX Coordinator or the investigator(s), will issue, simultaneously to the parties, a written determination regarding responsibility, which must include:

- Identification of the allegations potentially constituting Prohibited Conduct;
- Description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's Policy, Procedure, Code of Conduct, and/or relevant handbook to the facts;
- Statement of, and rationale for, the result as to each allegation, including:
  - A determination regarding responsibility,
  - Any disciplinary sanctions the College imposes on the respondent, and
  - Whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant; and
- Procedures and permissible bases for parties to appeal.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal (if any), or the date on which an appeal would no longer be considered timely.

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 respondent is found responsible, the Title IX Coordinator or Deputy will email the Sanctions to the respondent. The complainant will be informed of any sanctions to the extent consistent with FERPA and other applicable law. The Student Conduct Officer or Associate Vice President of Human Resources 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.

## **XI. Sanctions**

If the respondent is found responsible for a violation of the Policy, the Title IX Coordinator or Deputy will provide the Hearing Officer(s) with a copy of the respondent's disciplinary history, which may be considered by the Hearing Officer(s) in determining a sanction(s). Disciplinary records related to instances where the respondent has previously been found responsible for Prohibited Conduct are presumed to be relevant by the Hearing Officer(s) to the assignment of a sanction.

Possible disciplinary sanctions and remedies for *students* 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.

Possible disciplinary sanctions and remedies for *employees, volunteers, and contractors* may include, but are not limited to, a letter of reprimand, instructions to draft and send a letter of apology, termination of a contract, demotion, termination of employment, or expulsion from College programs.

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 Hearing Officer(s) may deviate from the range of recommended sanctions, based upon a full

consideration of the following factors:

- The respondent'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 complainant;
- The impact of the conduct on the community, its members, or its property;
- Whether the respondent has accepted responsibility for their actions;
- Whether the respondent 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 Hearing Officer(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 respondent to learn about the origins of their behavior, their responsibility for this behavior, and how they can change this behavior.

## **XII. 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 formal investigation process within 120 days of the Notice of Investigation. The College will strive to schedule and conduct the hearing within a reasonably prompt time frame after the completion of the investigation.

## **XIII. Appeals**

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

The College will offer both parties an appeal from a determination regarding responsibility, and from an institution's dismissal of a formal complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome;
3. Title IX Personnel [The Title IX Coordinator, investigator(s), or decision-maker(s)] had a conflict of interest or bias for or against complainants or respondents generally or individual complainant or respondent that affected the outcome.

Dissatisfaction with the outcome of a hearing is not grounds for an appeal. An appeal must be based on of the above bases.

For all appeals, the College will:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal complies with the regulations;
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- Issue a written decision describing the result of the appeal and the rationale for the result; and
- Provide the written decision simultaneously to both parties.

Either Party may file an appeal via email to the Title IX Coordinator. The appeal will be conducted in an impartial manner by an impartial decision-maker (the Appeal Officer). Appeal officers may be members of the College’s Executive Council or may be external Title IX professionals with specific training and experience, appointed for this purpose. Appeal officers must be unbiased and without any conflicts of interest.

**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.

**iii. 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 (as outlined above), 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.

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.

**d. 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.

**e. Burden of Proof**

In any request for an appeal, the burden of proof lies with the appealing Party, as the original Outcome is

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 Hearing Officer(s) merely because the Appeal Officer disagrees with the Outcome. Appeal decisions are to be deferential to the original Hearing Officer(s), making changes to the finding only where there is clear error.

#### **f. Outcome of Appeal**

The Appeal Officer may affirm or alter the Outcome, depending on the basis of the requested appeal.

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 Investigative Report and/or the Hearing Officer(s) must conduct a new hearing and/or issue a revised Outcome, as appropriate to the findings on appeal. Any additional investigation and revision of the Investigative Report and/or Outcome 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 Decision concurrently to each Party via their respective College-assigned e-mail accounts.

#### **g. Sanctions during Appeal**

Sanctions will be stayed pending the outcome of any appeal process. If a respondent is subject to an emergency removal or administrative leave prior to the conclusion of the Investigation and is suspended, expelled, or terminated as a result of the Investigation, the emergency removal or administrative leave will continue pending the outcome of any appeal.

#### **XIV. Records**

The College will maintain, for seven years, records of:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required; any disciplinary sanctions imposed on the respondent; and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity
- Any appeal and the result therefrom
- Any informal resolution and the result therefrom
- All materials used to train Title IX Personnel [Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process]. The College will make these training materials publicly available on its website.

The College will create and maintain for seven years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If the College does not provide a complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

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.

For respondents 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; or the Director for Human Resources to be placed in an employee's personnel file. Such records shall be used in reviewing any further conduct or issuing sanctions and shall remain a part of the respondent's conduct record.

All records generated under the Title IX Policy Against Sexual Harassment and Procedures shall be retained by the College for seven (7) years following the conclusion or dismissal of a complaint or report.

#### **XV. 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 Prohibited Conduct 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 Prohibited Conduct 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 Prohibited Conduct 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 Harassment.

**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 Prohibited Conduct relates to a crime of violence or non-forcible sex offense; (2) the respondent was found to have violated this Policy; (3) the alleged instance of Prohibited Conduct 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 Prohibited Conduct 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.

## **XVI. Conflicts with the Policy and Procedures**

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

If a complainant alleges Prohibited Conduct 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 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.