

# COLLEGE of CHARLESTON

## OFFICIAL POLICY

**9.5.1**

**Interim Title IX Sexual Harassment Policy  
and Grievance Procedure**

**08/11/20**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

### **Policy Statement**

#### **1.0 GENERAL POLICY STATEMENT**

It is the Policy of the College of Charleston (“the College”) to promote and protect a learning, living and working environment, free from sexual harassment, where civil discourse, respect for the individual and appreciation for the diversity of human experiences are valued. The College is committed to taking immediate, equitable and effective steps to respond to sexual harassment, to prevent its recurrence, and to address its effects.

This policy is being issued as an interim policy as it was created during the COVID-19 global pandemic in response to new regulations issued by the U.S. Department of Education with a required implementation date of August 14, 2020. As these regulations were issued during a time when most campuses, including our community, were working and learning remotely, and responding to COVID-19, this policy has not had the benefit of receiving important feedback from the campus community. Thus, while this policy meets the Title IX sexual harassment grievance process required by the U.S. Department of Education, we anticipate updating the policy, as appropriate, with feedback from the campus community.

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**Policy Manager and Responsible Department or Office**

Director of the Office of Equal Opportunity Programs and Title IX Coordinator, and the Office of Equal Opportunity Programs is responsible for the administration of this Policy.

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## Policy

### 2.0 APPLICABILITY

This policy and prohibition of Title IX sexual harassment shall apply to all members of the College community, including current and prospective students (meaning those who are registered or enrolled for credit- or non-credit-bearing coursework at the time of the alleged policy violation), faculty, staff, applicants for employment or admission; members of the Board of Trustees; and all others who demonstrate that they were attempting to participate in the College's education program or activity at the time of the alleged policy violation. The prohibition of Title IX sexual harassment shall also apply to contractors, vendors, visitors, guests or other third parties. This policy pertains to prohibited conduct committed by or against students, employees, and third parties<sup>1</sup> when the College has actual knowledge of Title IX sexual harassment that occurred:

- 2.1 In an **education program or activity** of the College; and
- 2.2 Against a person **in the United States**.

**"Education program or activity"** includes locations, events, or circumstances over which *the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs*. Education program or activity includes any building owned or controlled by a student organization that is officially recognized by the College as well as College owned or controlled property.

Where a formal complaint includes allegations of Title IX sexual harassment and other alleged violations of College policy, this grievance procedure may be used to resolve all alleged policy violations. Alleged sexual misconduct that does not meet the Title IX sexual harassment standard shall be processed in accordance with the Policy on the Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse and Student Sexual Misconduct Policy, as applicable.

### 3.0 EFFECTIVE DATE

This policy is effective August 14, 2020 and applies to alleged Title IX sexual harassment arising on or after this date.

### 4.0 TITLE IX SEXUAL HARASSMENT PROHIBITED

**Title IX sexual harassment is conduct based on sex that satisfies one or more of the following:**

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<sup>1</sup> The formal and informal grievance procedures do not apply to incidents involving respondents who are third parties. Reported third party misconduct will be handled expediently on a case-by-case basis and may include immediate removal of the third party from the campus or program or activity of the College.

- 4.1 **Quid Pro Quo**: An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
- 4.2 **Hostile Environment**: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- 4.3 **Sexual Assault**: Any sexual act directed against another person without consent of the victim, including instances where the victim is incapable of giving consent. These acts include:
- **Rape**: The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).
  - **Sodomy**: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sexual Assault with an Object**: Use of an object or instrument to penetrate, however slight, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. Object or instrument shall mean anything used by the offender other than the offender's genitalia.
  - **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the alleged victim, including instances where the alleged victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Statutory Rape**: Non-forcible sexual intercourse with a person who is under the statutory age of consent in South Carolina.
  - **Incest**: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in South Carolina.
- 4.4 **Dating Violence**: Violence committed by a person:
- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors (length of the relationship, type of the relationship, and frequency of interaction between the persons involved in the relationship).
- 4.5 **Domestic Violence**: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of South Carolina, or by any other person against an adult or youth victim who is protected from that person's acts under the

domestic or family violence laws of South Carolina.

- 4.6 Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or safety or the safety of others; or suffer substantial emotional distress.

## **5.0 RETALIATION**

Neither the College or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation. Complaints alleging retaliation will be addressed consistent with the College's policy on the Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse and related operating procedures and Student Sexual Misconduct Policy, as applicable.

## **6.0 PRIVACY AND CONFIDENTIALITY**

The College does not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, where a party's conduct toward a witness might constitute "tampering" (i.e., attempting to alter or prevent a witness's testimony), such conduct is prohibited. Information contained within the evidence review provisions afforded to the parties must not be inappropriately disclosed or disseminated by the parties.

The College will keep information private, to the extent reasonably possible and permitted under applicable law, including the identity of any person who has reported Title IX sexual harassment, or who has been reported to be a perpetrator of Title IX sexual harassment. However, information may be disclosed, and includes, but is not limited to, the following instances: as permitted under the Family Educational Rights Privacy Act (FERPA), if disclosure is required by other law or lawful process (e.g., subpoena or search warrant), or if disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process.

## **7.0 ADVISOR OF CHOICE**

Parties may be accompanied to any meeting, and during a hearing, by an advisor of their choice, who may be, but is not required to be, an attorney. An advisor may not participate in the interview as a representative of that party (that is, answer questions for, or ask questions on behalf of, their advisee or make statements for the advisee). Advisors may be asked to leave the interview if disruptive or causing an unreasonable delay in the conduct of the interview. During a hearing, advisors are permitted to ask relevant questions of parties and witnesses, during cross-examination, but are not permitted to offer opening statements, closing statements, or answer questions on behalf of a party.

## **8.0 REPORTING**

Maintaining a discrimination-free environment is the responsibility of every member of the College community. Timely reports of alleged violations enable the College to stop or prevent prohibited conduct from occurring or escalating. As the College can only take corrective action when it becomes aware of problems, the College reasonably expects prompt reporting of discrimination, harassment, sexual misconduct and retaliation under this Policy. All employees except those who are confidential

resources, as identified in this Policy, who receive reports of conduct that could violate this Policy, are expected to report it. This reporting obligation does not include public awareness events (such as "Take Back the Night" events) where survivors are encouraged to safely talk about their sexual assault experiences. Employees with the authority to institute corrective measures on behalf of the College include: President; Members of the President's Cabinet; Title IX Coordinator and Deputy Title IX Coordinators; Vice Presidents; and Deans. Employees with this authority must also report alleged violations to the Title IX Coordinator.

The College has designated Title IX Coordinators and the Office of Equal Opportunity Programs to carry out its Title IX obligations, which include investigating complaints alleging sex discrimination, including Title IX sexual harassment under this Policy. Therefore, all instances of sex-based discrimination, harassment and sexual misconduct must be reported to the Office of Equal Opportunity Programs. Contact information for the Title IX Coordinator:

**Office of Equal Opportunity Programs**  
**Robert Scott Small Building, Suite 115**  
**Main number: 843-953-5754**  
**Web: <http://www.eop.cofc.edu>**  
**Email: [eop@cofc.edu](mailto:eop@cofc.edu)**

Reports of Title IX sexual harassment may be submitted by any person to the Title IX Coordinator, or designee. Reports may be submitted by email, mail, phone or in person. The Title IX Coordinator is in the Office of Equal Opportunity Programs and may be contacted at the information provided above.

The following College officials, have been designated Title IX Coordinators and are located in the Office of Equal Opportunity Programs:

- The Director of the Office of Equal Opportunity Programs and Title IX Coordinator is the Title IX Coordinator for the College.
- The Deputy Director of the Office of Equal Opportunity Programs is the Deputy Title IX Coordinator for Students.
- The Equal Employment Opportunity Compliance Specialist is the Deputy Title IX Coordinator for Employees.

Additionally, the following employees have been designated Title IX Coordinators and are located outside of the Office of Equal Opportunity Programs:

- The Dean of Students is a Deputy Title IX Coordinator for Students and can be reached at 843-953-5522 or [Cabotj@cofc.edu](mailto:Cabotj@cofc.edu).
- The Senior Associate Director of Athletics is a Deputy Title IX Coordinator for student athletes and employees within the Athletics Department and can be reached at 843-953-5467 or [lagemanl@cofc.edu](mailto:lagemanl@cofc.edu).

In addition to, or in lieu of filing a formal complaint under this Policy, students and employees may file an external complaint(s) with the Office of Civil Rights in the United States Department of Education.

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

**Criminal Reports:** For alleged criminal conduct occurring on campus, reports also should be made to the Department of Public Safety (843-953-5611), or if the incident occurred off campus, reports should be made by calling 911. Sexual assault, domestic violence, stalking, and other forms of sexual violence are criminal acts. The College strongly encourages victims of criminal acts to promptly inform law enforcement to receive proper medical care, preserve evidence and to commence a timely criminal investigation. Regardless of whether the individual decides to pursue criminal remedies, the College offers advocate resources and counseling services.

## 9.0 SUPPORTIVE MEASURES

The College offers non-disciplinary, non-punitive individualized services, as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Upon receipt of a report of prohibited conduct under this Policy, the Title IX Coordinator, or designee thereof, will contact the person who may have experienced misconduct and discuss the availability of supportive measures along with their preferences about supportive measures, the availability of support measures with or without filing a formal complaint, and the process for filing a formal complaint.

### **Supportive measures can include, but are not limited to:**

- Mutual no-contact directives between the parties;
- Academic or work adjustments;
- Campus housing adjustments;
- Public Safety campus escorts;
- Increased security and monitoring of areas on campus;
- Referral to resources on and off-campus; and
- Any other measure the Title IX Coordinator deems appropriate given the circumstances.

## 10.0 CONFIDENTIAL RESOURCES

The College provides confidential resources for those individuals who wish to discuss a situation in strict confidence without providing notice to the College such that action under this Policy may be pursued. Confidential resources include:

- Office of Victim Services – 843-953-2273 (confidential services for victims of sexual misconduct or other crimes)

- The Counseling Center – 843-953-5640 (confidential counseling for students)
- Student Health Services – 843-953-5520 (confidential health services for students)
- Deer Oaks EAP Services – 866-327-2400 (confidential counseling for employees)

## 11.0 FORMAL GRIEVANCE PROCESS

**11.1 Equitable Treatment:** The parties will receive equitable treatment under this grievance process. Complainant(s) and respondent(s) will be offered supportive measures, and remedies will be provided to the complainant where a determination of responsibility for Title IX sexual harassment has been made against the respondent.

**11.2 Objective Evaluation of Relevant Evidence:** Both during the investigation and hearing, relevant evidence will be evaluated objectively, including both inculpatory and exculpatory evidence.

**11.3 No Conflicts of Interest or Bias:** Individuals serving as Title IX Coordinators, investigators, decision-maker(s), or any person facilitating an informal resolution are trained in conducting fair, thorough, and impartial proceedings and do not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## 12.0 COMPLAINTS

**12.1 Formal Complaint:** At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the College. Complaints must be in writing and signed by the complainant. The respondent must be a member of the campus community (e.g., employee or student).

**12.2 Formal Complaint Signed by the Title IX Coordinator, or designee:** The Title IX Coordinator, or designee may submit a complaint alleging misconduct prohibited by this policy. In such instances, the Title IX Coordinator, or designee, does not become the complainant or a party to the complaint. When a Title IX Coordinator, or designee, signs a formal complaint, that action does not place the Title IX Coordinator or designee in a position adverse to the respondent. The Title IX Coordinator or designee is initiating an investigation based on allegations of which the Title IX Coordinator has been made aware and does not prevent the Title IX Coordinator from being free from bias or conflict of interest with respect to any party. Where an individual reporting an alleged violation requests that the College not take any action, the College may still have an obligation to respond and will consider factors to determine what action may be necessary (e.g., the seriousness of the alleged conduct, whether violence was threatened and/or weapons were used, whether there have been other reports about the same individual; the age of the victim; the credibility of the information received, and when the College has an outweighing interest, including protecting the rights and safety of others).

**12.3 Submission of Formal Complaint:** Complainants may submit the complaint by email, mail or in-person to the Office of Equal Opportunity Programs.

**12.4 Notice of Formal Complaint:** After receipt of a formal complaint alleging Title IX sexual

harassment under this policy, the Title IX Coordinator, or designee, shall send written notice of the formal complaint to the parties. The notice will provide:

- Information about the allegations, including sufficient detail, known at the time;
- 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;
- Notice to the parties that they may have an advisor of their choice who may be an attorney;
- Notice that the parties may inspect and review evidence, as applicable; and
- Notice that knowingly submitting false information during the grievance process is prohibited, and with reasonable time to prepare a response before any initial interview.

Prior to an initial interview, the parties will be invited to a meeting to discuss the grievance process and the need for supportive measures.

If additional allegation(s) are raised during the investigation, that will also be investigated under this grievance process, the notice to the parties will be supplemented with the applicable updated information.

**12.5 Consolidation of Formal Complaints:** The Title IX Coordinator, or designee, may consolidate formal complaints against one or more respondents filed by one or more complainants that arise out of the same facts or circumstances. In essence, the allegations are so intertwined that the allegations directly relate to all the parties. This also may include counter-complaints by one party against the other. A single investigative report will be issued where complaints are consolidated.

**12.6 Mandatory Dismissal of Formal Complaint:** If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined above, did not occur in the College's education program or activity, or did not occur against a person in the United States, then the College must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. This does not preclude the alleged misconduct from being addressed under another policy.

**12.7 Discretionary Dismissal of Formal Complaint:** The College may dismiss the formal complaint or any allegations therein, if at any time 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;
- the respondent is no longer enrolled or employed by the College;
- or other specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations contained in the complaint (i.e., where a complainant refuses to participate in the process, where the respondent is not under the authority of the College because the respondent is a non-student, non-employee, or other individual not affiliated with the College).



**12.8 Notice of Dismissal of Formal Complaint:** Upon either a discretionary or mandatory dismissal of a formal complaint, the College will send written notice of the dismissal along with the reason(s) for the dismissal simultaneously to the parties.

### 13.0 INTERIM ACTION

**13.1. Emergency Removal of Students:** The College may remove a respondent from the College's education program or activity on an emergency basis. Prior to an emergency removal, the College will undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student or other individual based on the allegations of Title IX sexual harassment which justifies emergency removal of the respondent. A respondent will receive notice of the emergency removal and the opportunity to challenge the decision immediately following the removal. A respondent whose primary role with the College is a student may challenge the emergency removal by submitting an appeal of this decision, setting forth the reasons why the circumstances do not support emergency removal to the Dean of Students within five business days of notification of removal.

**13.1.1 Emergency Removal Inappropriate, Generally:** Emergency removal is not appropriate in every situation where Title IX sexual harassment has been alleged, but only in situations where an individualized safety and risk analysis supports removal.

**13.1.2 Examples:** Emergency removal may be appropriate where a respondent threatens violence against the complainant in response to the complainant's allegations, the allegations themselves raise an immediate threat to health or safety of any person, the respondent reacts to being accused of Title IX sexual harassment by threatening self-harm, etc.

**13.2 Administrative Leave:** The College may place a non-student employee respondent on administrative leave during the pendency of this grievance process. Student employees may also be placed on leave where the student-employee's access to educational benefits and opportunities are not jeopardized.

**13.3 Other Interim Action:** The Title IX Coordinator, or designee, may implement other interim action as may be appropriate under the circumstances.

### 14.0 INVESTIGATION OF FORMAL COMPLAINT

**14.1 Timeframe for Investigation:** The College makes all reasonable efforts to complete the investigation of formal complaints, exclusive of any appeals, evidence review and comment periods, within 90 business days. This timeframe may be extended for good cause. Good cause may include things such as the absence of a party, a party's advisor or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; etc. Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for that extension.

**14.2 Burden of Proof:** The burden of proof shall be on the College to make all reasonable efforts to gather relevant evidence that is directly related to the formal complaint and to decide

about whether this policy has been violated.

**14.3 Presumption of Innocence:** The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

**14.4 Privileged Information:** The grievance process, including hearings, will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privileged, unless the person holding the privileged has waived it. 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 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 that party provides voluntary, written consent.

**14.5 Evidence:** Both parties will have the opportunity to present inculpatory and exculpatory evidence and name witnesses, including fact and expert witnesses. Where evidence is duplicative of other evidence, the investigator may deem the evidence not relevant. Parties to the grievance process under this policy do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. Likewise, the College does not compel participation or have subpoena power under this grievance process. The College expects all parties and witnesses to be truthful in information that they provide to the College, and the failure to be truthful in this process may constitute a separate violation of College policy.

**14.6 Review of Evidence:** Both parties have the opportunity, upon request, to review evidence that is directly related to the allegations raised in the formal complaint that has been received by the investigator and that is not protected by legal privilege that has not been waived. The investigator may redact information that is not directly related to the allegations or as may be required under applicable law. Requests to review evidence under this provision must be made, in writing, to the investigator at least 10 business days prior to review. Information contained within this evidence review must not be inappropriately disclosed or disseminated by the parties. This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to gather and present relevant evidence.

**14.7 Review of Relevant Evidence and Written Response:** Prior to completion of the investigative report, the parties and their advisors, if any, will receive the relevant evidence directly related to the allegations raised in the formal complaint in an electronic format or a hard copy. The investigator may redact information that is not relevant or as may be required under applicable law. The parties will have 10 business days to review this evidence and to submit a written response, which the investigator will consider prior to completion of the investigation. Information contained within this review must not be inappropriately disclosed or disseminated by the parties. This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to

gather and present relevant evidence.

**14.8 Investigative Report:** Upon conclusion of the investigation of the formal complaint, the investigator will prepare a written report that fairly and accurately summarizes the investigation and includes any inculpatory and exculpatory evidence.

**14.8.1 Review of Investigative Report and Written Response:** At least 10 business days prior to the hearing, each party and their advisor, if any, will receive the investigative report in an electronic format or a hard copy, for their review and written response. The investigator may redact information that is not relevant or as may be required under applicable law. A party may submit a written response to the investigative report within 10 business days of receipt thereof. Any written response provided by the party under this provision will be included and provided to the decision-maker(s). If no response is received within 10 business days from the provision of the investigative report to the party, the College will proceed with issuing the report without the response. Information contained within this review must not be inappropriately disclosed or disseminated by the parties. This section shall not be construed to restrict the ability of either party to discuss generally the allegations or to gather and present relevant evidence.

## **15.0 INFORMAL RESOLUTION PROCESS**

After receipt of a formal complaint, the College may offer an informal resolution to the parties, depending on whether the College determines that informal resolution may be appropriate, and the parties agree. The parties must voluntarily agree, in writing, to the informal resolution process to resolve a complaint informally. Either party may withdraw from the informal resolution process prior to agreeing to a resolution and resume the formal grievance process.

To proceed with an informal resolution, the College will provide written notice to the parties about the following information:

- The allegations;
- The requirements of the informal resolution process; and
- Any consequences that may result from participating in the informal resolution process such as records that will be maintained or shared.

Informal resolution does not involve full investigation or adjudication as set forth in the formal grievance process. The College makes all reasonable efforts to complete the informal resolution process within 45 business days. This timeframe maybe extended for good cause. Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for the extension. Resolutions reached in the informal resolution process will be binding on the parties.

**Informal resolution will not be used to resolve allegations that an employee engaged in Title IX sexual harassment of a student.**

## **16.0 HEARINGS**

A hearing shall be conducted live either in-person, telephonically, or via other means to reach a determination about responsibility. Either party may participate remotely, at their election. The

hearing shall be recorded, by audio or audiovisual recording, or by transcript. The recording will be available for the parties to inspect and review. Written requests to review the recording shall be made to the Office of Equal Opportunity Programs. The decision-maker(s) cannot be the same person as the Title IX Coordinator, Deputy Title IX Coordinators or investigators. The decision-maker(s) will objectively evaluate all relevant evidence, both inculpatory and exculpatory, and reach a determination regarding responsibility as alleged in the formal complaint.

**16.1 Questioning of Parties and Witnesses by Advisor:** At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. This questioning is limited to cross-examination and does not include direct examination. Cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Only relevant cross-examination may be asked of a party or witness. Before a complainant, respondent, or witness answers questions posed during cross-examination, they must await determination by the decision-maker(s) about whether the question is relevant.

**16.1.1 Appointing Advisors:** If a party does not have an advisor present at the live hearing, the College will provide an advisor, without fee or charge to that party, for the limited purpose of conducting cross-examination on behalf of that party. Parties must notify the College at least three business days prior to the hearing of whether the party has an advisor to bring to the hearing.

**16.2 Relevancy Determinations:** Determinations about the relevancy of evidence at the hearing shall be made by the decision-maker(s). The decision-maker(s) will provide a brief explanation for decisions about excluding evidence or questions based on relevancy. For instance, a decision-maker(s) may explain briefly that a question is irrelevant because the question calls for prior sexual behavior information without meeting an exception thereto, or because the question asks about a detail that is not probative of any material fact concerning the allegations.

**16.2.1 Evidence that is Not Relevant and Must be Excluded:**

- Information that is protected by a legally recognized privilege that has not been waived;
- Evidence about a complainant's prior sexual behavior or predisposition are not relevant *unless* offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent;
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent; and
- Party or witness statements that have not been subjected to cross-examination at a live hearing.

**16.3 Refusal to Submit to Cross-Examination During Hearing:** If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any

statement of that party or witness in reaching a determination regarding responsibility. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

**16.4 Police, Sexual Assault Nurse Examiner (SANE), Other Reports:** Police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination.

**16.5 Written Statements:** Written statements cannot be relied upon unless the witness submits to cross-examination. Whether a witness's statement is reliable must be determined considering the credibility-testing function of cross-examination, even where nonappearance is due to death, unavailability, or post-investigation disability.

**16.6 Text Messages and Emails:** Where evidence involves intertwined statements of both parties (e.g., a text message exchange or e-mail thread) and one party refuses to submit to cross-examination and the other does submit, the statements of the non-submitting party may not be relied upon but the statements of the other party may be relied on.

**16.7 Video Evidence:** Where a party refuses to answer cross-examination questions but video evidence exists showing the underlying incident, the decision-maker(s) may still consider the evidence in making a determination.

**16.8 Written Determination by Decision-Maker(s):** The decision-maker(s) will determine responsibility via written determination.

**16.9 Contents of Written Determination:**

- Identification of the allegations that would, if true, constitute Title IX sexual harassment;
- General description of the procedural steps taken from the 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 evidence and information about any hearings;
- Findings of fact supporting the determination of responsibility;
- Conclusions regarding the application of the Title IX Sexual Harassment Policy to the facts;
- A statement of and rationale for, the result as to *each allegation*, including a determination regarding responsibility, any disciplinary sanction(s) or recommendation(s), and any remedies for the complainant; and
- The process and bases for the complainant and respondent to appeal the written determination of responsibility.

**16.10 Timing of Written Determination:** The parties will be provided simultaneous notification of the written determination of responsibility. The College makes all reasonable efforts to issue its written determination within 30 business days from the conclusion of the hearing. This

timeframe maybe extended for good cause. Should the timeframe be extended, the parties will be notified, in writing, about the extension and the reason for the extension.

**16.11 Finality of Written Determination:** The written determination of responsibility becomes final only after the time period to file an appeal has expired, or if a party does file an appeal, after the appeal decision has been sent to the parties.

## **17.0 STANDARD OF EVIDENCE**

The standard of evidence used to determine violations of this policy is preponderance of evidence. The preponderance of evidence standard is understood to mean concluding that a fact is more likely than not to be true. Where the evidence in a case is equal, i.e., 50% 50% between the parties, then the standard has not been satisfied.

## **18.0 SANCTIONS**

Where the decision-maker(s) finds that a respondent has violated this policy, a sanction proportionate to the severity of the violation will be issued. Sanctions range from mandatory education to separation from the College. Student sanctions may include things such as expulsion, suspension, removal from campus housing, deferred suspension, mandatory referral to counseling, and disciplinary service, among other potential sanctions. Employee sanctions may include termination, written reprimand, suspension, among others. Appropriate corrective action will be taken to address, end and prevent recurrence of Title IX sexual harassment.

## **19.0 REMEDIES**

Remedies are designed to restore or preserve equal access to the College's education program or activity. Appropriate remedies, as determined by the particular circumstances of the matter, will be provided to a complainant where a determination of responsibility for Title IX sexual harassment has been made. Remedies may include the examples given as supportive measures, and other action designed to address, end, remedy and prevent recurrence. Remedies that do not directly affect the respondent will not be disclosed to the respondent (e.g., academic adjustments made for the complainant to restore equal access to the College's education program or activity).

## **20.0 APPEALS**

**20.1 Appeal of Dismissal of Formal Complaint:** A complainant or respondent may appeal the dismissal of a formal complaint, or allegations therein, within 10 business days of the date of the notice of the dismissal. Appeals must be submitted, in writing, to the Vice President of Human Resources. The appeal must include a written statement providing the specific grounds for appeal outlined below, along with any further statement in support of or challenging the dismissal.

**20.2 Appeal of Written Determination of Responsibility:** A complainant or respondent may appeal the written determination of responsibility within 10 business days from the date of the written determination of responsibility. Where the respondent's primary role with the College is a student, appeals under this section must be submitted, in writing, to the Executive Vice President of Student Affairs. Where the respondent's primary role with the College is a faculty member, appeals under this section shall be submitted to the Provost and Executive Vice President for Academic Affairs. Where the respondent's primary role with the

College is a staff member or other administrator, appeals under this section shall be submitted to the Chief of Staff. The appeal must include a written statement providing the specific grounds for appeal outlined below, along with any further statement in support of or challenging the determination of responsibility.

**20.3 Grounds for Appeal:**

- Procedural irregularity that affected the outcome of the matter;
- New evidence not reasonably available at the time the determination was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Deputy Title IX Coordinators, investigators or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

**20.4 Notice of Appeal and Opportunity to Respond:** The parties will be notified, in writing, if an appeal is filed. The non-appealing party shall have five business days from notification of the appeal to submit any response. The parties will be provided with the appeal and any written response thereto.

**20.5 Decision of Appeal:** The appeal decision-maker(s) will be an official other than the decision-maker(s) that reached the decision being appealed, and likewise will not be the investigator(s), Title IX Coordinator or Deputy Title IX Coordinators. Within 15 business days of receipt of all documents from the parties, including any response from the non-appealing party, the appeal decision-maker(s) will issue a final written decision which specifies the result of the appeal and rationale for the result. This final determination will be simultaneously provided to the parties.

**21.0 RECORD RETENTION**

The following documents created pursuant to this Policy will be maintained for seven years, subject to any disclosure limitations by law or regulation:

- Each Title IX sexual harassment investigation, including any determination about responsibility;
- Any audio or audiovisual recording or transcript of a hearing under this grievance procedure;
- Any disciplinary sanctions imposed upon a respondent;
- Any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
- Any appeal and the result;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

Records under this section will be maintained in the Office of Equal Opportunity Programs.

## **22.0 CONDITIONAL AMNESTY FOR STUDENTS**

In deference to its compelling interest to promote and protect a learning, living and working environment free from sexual harassment, the College has elected not to pursue any related recreational alcohol and other drugs use/possession violations against a student who reports to be a victim of sexual harassment under this policy or against a student named as a respondent, or student(s) who are witnesses or reporters, as may be appropriate under the circumstances. In some instances, the College may explore educational interventions with a student in the interests of their health and safety, but no conduct proceedings will result should conditional amnesty be granted.

The College may deny amnesty from students found to have been engaging in drug or alcohol use/possession violations that harmed another person specifically, (e.g., intentionally using drugs or alcohol to facilitate a sexual assault or other sexual violence) or the campus community generally including, but not limited to, sale or distribution of drugs and/or alcohol.

**This provision does not apply to employees.**

## **23.0 TRAINING**

The College provides training to its Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The training generally includes information about the following:

- Definition of Title IX sexual harassment;
- Scope of the College's education program or activity;
- How to conduct an investigation and grievance process, including hearings, appeals, and information resolution processes, as applicable; and
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Decision-makers also receive training on any technology that will be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Training materials used to train Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process, are posted and available for review on the Office of Equal Opportunity Programs website.

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**Departments/Offices Affected by the Policy**



This Policy applies to the entire College community.

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### Procedures Related to the Policy

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### Related Policies, Documents or Forms

Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse  
Student Sexual Misconduct Policy  
Workplace Violence Policy  
Consensual Relations Policy  
Faculty Administration Manual  
Student Code of Conduct  
Employee Code of Conduct

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**Issue Date: 8/11/2020**  
**Date of Policy Revision:**

**Next Review Date: 8/11/2022**

### POLICY APPROVAL

(For use by the Office of the Board of Trustees or the Office of the President)

Policy Number: 9.5.1

President or  
Chairman, Board of Trustees

  
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Date: 8/11/2020  
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