

Procedure 3.29.0

Description: TITLE IX PROCEDURE

Middlesex College is compliant with **Title IX of the Education Amendments of 1972** (“Title IX”), as amended, which prohibits discrimination on the basis of sex in educational programs and activities. The sex discrimination prohibited by Title IX includes various forms of sexual harassment and sexual violence, including VAWA offenses, that interfere with a person’s equal access to the College’s educational programs and activities. This policy is intended to implement the requirements of Title IX and the regulations promulgated by the United States Department of Education on May 19, 2020, which define sexual harassment, address how the College must respond to reports of misconduct falling within that definition and require a specific grievance process that the College must follow.

This Policy sets forth the manner in which the College will deal with reported instances of Title IX sexual harassment, per the new regulations. Allegations of sexual harassment that do not come within the purview of the regulations, as well as other alleged misconduct, will be addressed under the Middlesex College Board of Trustees Policy and/or Procedures Manual, or the Code of Student Conduct (collectively referred to as the “Code of Conduct”).

Policy Statement

Middlesex College will promptly respond in a manner that is not deliberately indifferent any time the College has actual knowledge of an allegation of sexual harassment prohibited under Title IX which occurred in a College education program or activity and was committed by a current College student, employee and/or third-party covered by this Policy.

Definitions

For purposes of this Policy only, the following Definitions apply:

“**Covered Sexual Harassment**” means conduct on the basis of sex that constitutes one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (*quid pro quo* harassment);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive **and** objectively offensive that it effectively denies a person equal access to the College’s education program or activity;
3. Sexual assault as defined in the Clery Act, **or** dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

Conduct that does not fit within any of the above categories cannot be pursued under the Title IX procedures, but may be pursued under the Code of Conduct.

“**Consent**” means clear and unambiguous communication expressing agreement to the act in which the participants are involved, and is assessed objectively from the viewpoint of a

reasonable person in the Respondent's position. The following rules also apply to the definition of "Consent":

- Consent must be clear, verbal, sober and affirmative;
- Consent must be obtained for each and every sexual activity to constitute effective consent;
- Consensual activity requires a mutual decision of both parties without any hint of force, threat, coercion, pressure, fraud, manipulation or fear of injury;
- Consent cannot be given if the victim is mentally or physically incapacitated due to alcohol and/or other drugs or due to a temporary or permanent mental or physical condition;
- Silence, passivity or the lack of active resistance is not consent;
- Previous sexual activity, either between the same parties or with other parties, does not equal current consent;
- Consent to one form of sexual activity does not equal consent to other forms of sexual activity;
- Consent can be withdrawn at any point.

"Actual Knowledge" means the receipt of notice of sexual harassment or allegations of sexual harassment by the Title IX Coordinator or any College official who has the authority to institute corrective measures on behalf of the College.

"Complainant" is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, irrespective of whether a formal complaint has been filed. The Complainant does not necessarily have to be the person who files the formal complaint.

"Respondent" is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

"Educational Program or Activity" includes locations, events or circumstances in which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

"Formal Complaint" means the document alleging that sexual harassment occurred within an education program or activity and requesting initiation of the procedures necessary for investigating the allegation of sexual harassment. A Formal Complaint may only be filed by the Complainant or the Title IX Coordinator.

"Advisor" means any individual who provides the Complainant or the Respondent with support, guidance or advice, and conducts the cross-examination at any hearing.

"Proceeding" means all activities related to the College's resolution of the formal complaint, including but not limited to, fact-finding investigations, formal or informal meetings and hearings.

“**Relevant Evidence/Questions**” refer to any questions and evidence that tend to make an allegation of sexual harassment more or less likely to be true. The following types of evidence and questions are deemed irrelevant at all stages of the process described herein:

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless: (1) they are offered to prove that someone other than the Respondent committed the conduct alleged by the complaint; or (2) they concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent;
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege;
- Any party’s medical, psychological and similar records unless the party has given voluntary, written consent; and,
- Questions that are duplicative or repetitive

“**Result**” means any initial, interim and final decision by any official or entity with the right to resolve disciplinary matters. The Result must include any sanctions imposed by the College. The Result must also include the rationale for the result and the sanctions.

“**Retaliation**” means intimidating, threatening, coercing or in any way discriminating against an individual because of the individual’s formal or informal complaint or participation in an investigation or proceedings related to sexual harassment, sexual assault or sexual violence. Any retaliation against an individual for exercising their rights or responsibilities under any provision of this Policy is strictly prohibited.

“**Supportive Measures**” or “**Corrective Measures**” are measures that 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. Supportive measures are non-disciplinary, non-punitive and individualized services, without fee or charge to either party, and are provided before or after the filing of a formal complaint or where no formal complaint has been filed. The terms “supportive measures” and “corrective measures” are used interchangeably herein and have the same meaning.

General Procedure

Any member of the College community may report an instance of sexual harassment. When the Title IX Coordinator, or a College official with authority to institute corrective measures, receives a report of sexual harassment, they shall inform the Complainant of the availability of supportive measures and the option of filing a formal complaint to initiate the grievance procedure set forth herein.

A written and signed formal complaint must be filed by the Complainant or the Title IX Coordinator in order to initiate the grievance process set forth herein. There will be no investigation into an allegation of sexual harassment under Title IX unless the Complainant

submits a formal complaint expressing that she/he would like the College to investigate, or the Title IX Coordinator submits a formal complaint after having determined that an investigation is necessary in order to comply with the College's obligations under Title IX. No disciplinary sanctions or other actions that are not supportive measures may be imposed against a Respondent without first following the grievance process.

Non-Title IX Offenses

When an allegation is made of sexual harassment that does not fit within the provisions of Title IX, or when an allegation is made of some other type of misconduct, the College may investigate and adjudicate such offenses under the College's Code of Conduct.

Mandatory Reporters

Mandatory reporters are those employees who must report an incident of sexual harassment to the Title IX Coordinator or other College official with authority to implement supportive measures. The reporting employee must provide all relevant details about the alleged sexual harassment shared by the victim including the name of the victim and accused, any witnesses and other relevant facts, including the date, time and specific location of the alleged incident(s). This will ensure that alleged victims are provided with appropriate resources and supportive measures even if they decide they do not want to file a formal complaint.

The following employees or categories of employees are mandatory reporters of the College:

- Administrators
- Deans
- Coaches
- Directors
- Health Services
- Faculty
- Campus Police

In addition, all managers and supervisors are required to notify the Title IX Coordinator upon receipt of a report of alleged sexual harassment from an employee.

The following employees are considered officials with authority to implement supportive measures:

- Title IX Coordinator
- Vice President, Institutional Effectiveness, Planning, and Compliance
- Executive Director, Human Resources

Reporting Sexual Harassment

Middlesex College encourages all students and employees to promptly report any sexual harassment that may be prohibited under this Policy to the Title IX Coordinator so that the College can respond appropriately. Reports of sexual harassment can be made by any person (i.e. victim, family member, friend, witness, etc.), in any manner (i.e. verbally or in writing, in person or by email, etc.) and at any time (i.e. during business hours, during holidays or breaks, etc.).

If a report of sexual harassment is made by someone other than the alleged victim, the Title IX Coordinator shall promptly notify the alleged victim that a report has been made, discuss the availability of supportive measures, with or without the filing of a formal complaint, consider the alleged victim's wishes with respect to supportive measures, and explain the process for filing a formal complaint. The alleged victim then has the option of whether or not to file a formal complaint. However, even if the alleged victim does not wish to file a formal complaint, the Title IX Coordinator has the obligation to take all steps necessary to meet the College's Title IX requirements including, but not limited to, filing a formal complaint.

Supportive Measures

Alleged victims of sexual harassment have the right to receive supportive measures even without the filing of a formal complaint. Supportive measures are also available to Respondents. Any supportive measures provided to either party will be kept confidential to the greatest extent possible. Supportive measures may include, but are not limited to: modification of class or work schedule, changes in work location, course-related modifications such as extension of deadlines, increased security and/or campus escorts, counseling and no contact orders between the parties. The selection and implementation of supportive measures shall be an interactive process between the Title IX Coordinator, the alleged victim and any other parties necessary to implement the measures.

Emergency Removal

Although the College may not impose any disciplinary sanctions on a Respondent without following the grievance process set forth herein, the College may remove a student or employee Respondent from a program or activity on an emergency basis where the College undertakes an individualized safety and risk analysis and determines that there is an immediate and identified threat to the physical health or safety of any individual arising from the allegations of sexual harassment which justifies a removal. This determination will be made by the Vice President for Institutional Effectiveness, Planning and Compliance following a review of available evidence.

An emergency removal shall not be deemed to be a pre-judging of the allegations against the Respondent, who is entitled to a presumption of non-responsibility pending completion of the grievance process. To that end, the College must consider the appropriateness of any possible supportive measures in lieu of an emergency removal. Emergency removal should be an option only when no other alternative will be sufficient.

The Respondent shall receive notice of the emergency removal specifying the threat of physical health and/or safety that compelled the removal decision. The Respondent shall have the immediate opportunity to challenge the removal by appealing, in writing, to the President, identifying the reasons why the threat is not valid and/or why emergency removal is not necessary. The President's designee shall make a decision within five (5) days of receipt of the challenge.

Administrative Leave

The College may place an employee Respondent on administrative leave after a formal complaint has been filed and the grievance process has commenced in order to effectuate a temporary separation of the employee. Administrative leave is intended to be utilized in non-emergency situations and shall be implemented in accordance with any applicable College policies and collective bargaining agreements.

Filing a Formal Complaint

A formal complaint may be filed by a Complainant by mail or delivery to the Office of the Title IX Coordinator located in Chambers Hall, or electronically to title9@middlesexcc.edu. The complaint must be in writing, detail the facts alleged and be signed by the Complainant. The Complainant's signature on the complaint indicates the Complainant's request to have the College investigate and adjudicate the complaint. Within three (3) business days of receipt of a formal complaint, the Title IX Coordinator shall provide written confirmation of receipt to the Complainant.

A formal complaint may also be filed by the Title IX Coordinator even if a Complainant does not wish to pursue a formal complaint. Upon receiving actual notice of alleged sexual harassment, the Title IX Coordinator must determine whether it is necessary to file a complaint in order for the College to respond to the reported conduct in a way that is not deliberately indifferent. If the Title IX Coordinator decides to initiate a complaint, the Complainant will be provided written notice of this decision. The Complainant is not required to participate in the grievance process even if the Title IX Coordinator files a complaint, although the Complainant will be provided with all notices required under this Policy.

Only the filing of a formal complaint triggers the commencement of an investigation and grievance process. In all cases, the grievance process will be concluded within ninety (90) days, excluding appeals, unless good cause exists for extension of that timeframe, as described below.

Notice of Allegations

Within five (5) business days of the filing of a formal complaint, the Title IX Coordinator shall provide written notice of the allegations set forth in that complaint to both the Complainant and the Respondent. The five (5) day time limit may be extended for good cause, such as when additional time is needed to collect all the required information for the notice.

Notice of the allegations shall contain sufficient details known at the time including the identities of the parties, the conduct allegedly constituting sexual harassment and the date and location of the alleged incident, if known. The notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the end of the grievance process. In addition, the notice must inform the parties that they may have an advisor of their choice and that they may inspect and review evidence. The notice shall caution the parties that the College Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice must be provided with sufficient time for the parties to review and prepare a response before any initial interview.

The Title IX Coordinator must notify the parties of the date, time, location, participants and purpose of any and all investigative interviews.

In the event that the investigation reveals additional incidents and/or allegations of sexual harassment coming within Title IX, the Title IX Coordinator shall issue an updated notice of allegations advising of the new allegations. The parties will again be provided with sufficient time to review and respond to the new notice of allegations prior to any investigative interview.

Notice of the allegations, and all other notices required under this Policy, shall be given via email to the Complainant's and Respondent's College email accounts, or by regular mail to those parties not students or employees of the College.

Investigation, Evidence & Reports

The College will designate an investigator to investigate the allegations of the complaint. The investigator may interview all parties and witnesses, as well as gather any relevant documentary and other materials. Nothing herein shall require participation in the grievance process by any Complainant, Respondent and/or witness.

Interviews

As part of the investigation, the investigator may interview the Complainant, Respondent and all witnesses. Both the Complainant and the Respondent shall have an opportunity to identify witnesses for the College to interview. All witnesses may be interviewed, but witness statements will only be considered if the witness testifies and is subject to cross-examination at the hearing.

The College shall send written notice to any person it proposes to interview at least five (5) calendar days before the interview. The notice shall set forth the date, time, location, participants and purpose of the interview. Parties shall also be notified that they have the option to have an advisor and/or support person present at the interview.

Evidence

The investigator may gather any relevant evidence that is directly related to the allegations of the complaint, subject to the restrictions contained herein. The parties and witnesses have the option of submitting any evidence they deem relevant for consideration by the investigator. All such evidence from the parties must be submitted before the parties' time to inspect and review evidence begins. The investigator shall collect the evidence keeping in mind that the College has the burden of proving that a violation of Title IX has occurred by a preponderance of the evidence. The preponderance of the evidence standard requires proof that it is more likely than not that a violation occurred.

Evidence is "relevant" if it tends to make an allegation in the complaint more or less likely to be true. The following evidence is considered irrelevant at all stages of the proceeding:

- Any party's medical, psychological and/or similar records unless the party voluntarily consents to its use in writing;
- Information protected under a legally recognized privilege; and,
- Evidence about the Complainant's prior sexual behavior or predisposition, unless:
 1. The evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or,
 2. The evidence relates to specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Once all the potential evidence has been gathered, both the Complainant and the Respondent, as well as any advisors, shall be given an opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. Notably, the evidence shared with the parties need only be directly related to the complaint and not necessarily relevant. Similarly, the investigator shall not be permitted to redact information that is not directly related to the allegations or that is otherwise barred from use, such as privileged information. If any redactions are made, a privilege log shall be created which will give the parties the option of challenging the basis for the redactions.

Each party and their advisors shall be provided a copy of all such evidence in electronic format or hard copy. The College, in its sole discretion, shall determine the format by which the evidence will be provided. However, prior to releasing the evidence, the parties and any advisors must sign an agreement confirming that they will not disseminate or copy any of the evidence for any purpose outside the Title IX grievance process. The evidence shall also be made available to the parties during any hearing for reference and for purposes of cross-examination.

The parties shall have ten (10) days to review the evidence and submit a written response which the investigator will consider before completing the investigation report. Each written response will be provided to the other parties and their advisors. A response submitted after ten (10) days will not be considered. In the event one or more of the written responses triggers the need for additional investigation, the investigator shall have the right to extend the investigation upon providing notice to the parties of the reason for the extension. If new evidence is discovered during an additional investigation, that new evidence shall be provided to the parties, who shall have a new opportunity to respond.

Investigation Report

At the conclusion of the investigation, the investigator shall prepare an investigative report that fairly summarizes the relevant evidence. Only relevant evidence must be included in the report. The report may include the procedural steps taken in the investigation process, the timeline of the investigation and summarize the relevant supporting documentation. The investigator is permitted to redact irrelevant information from the report if that information is contained in documents that are otherwise relevant.

The investigator shall provide a copy of the investigative report to the parties and any advisors for review and response at least ten (10) days prior to any scheduled hearing. If a party wishes to submit a written response to the report, the party must submit the response at least four (4) days prior to the scheduled start of the hearing. Upon receipt of a response from either party, the investigator may, but is not required to, amend the investigation report if deemed necessary. The investigator will then provide the investigation report and each party's responses to the Complainant, Respondent, their advisors and the decision-maker(s) at least two (2) days prior to the scheduled hearing.

Hearings

In all cases which are not dismissed or resolved through the informal resolution process, a live hearing shall be held prior to the imposition of any disciplinary sanctions. Neither party may waive the right to a live hearing, but participation in the hearing is voluntary. If a party does not attend the hearing, the hearing will nevertheless proceed and reach a final determination. The decision-maker(s) shall not consider the absence of a party in making a determination.

The hearings shall not be public. The only persons permitted at the hearing are the parties, their advisors, witnesses, the decision-maker(s), any support persons and a College employee to handle the practical and technical aspects of the hearing.

Hearing Panel

At the end of the investigation, a hearing panel will be convened to determine whether the Respondent is responsible or not responsible for sexual harassment under Title IX. The hearing panel will have three (3) members drawn from a small group of specially-trained College administrators. In certain matters, the College may include retired judges, lawyers or other

individuals with relevant experience and special training. Panelists will not be from the department of either the Complainant or the Respondent. All panelists will receive training from experts in the field at least once a year on such subjects as impartiality, rape shield protections, issues of relevance, hearing decorum and hearing technology. The Complainant and Respondent will be informed of the panel's membership before the hearing process begins.

Certain individuals involved in the grievance process at issue cannot serve on the hearing panel including the Title IX Coordinator, the investigator or a party advisor. These individuals also cannot serve as the appeals officer in the same case, nor can anyone on the hearing panel serve as appeals officer.

Notice of Hearing

The Title IX Coordinator shall provide written notice of the hearing to the parties no less than ten (10) days prior to the hearing. The notice must include the allegations of the complaint, the time, date and location of the hearing, the name(s) of the decision-maker(s)/hearing panel, information on requesting any kind of accommodation, a copy of the hearing guidelines, a statement that each party is entitled to have an advisor of choice conduct cross-examination on their behalf, and a statement directing each party to provide the Title IX Coordinator with witness information and/or any supporting documents they intend to introduce at the hearing.

Each party must supply the Title IX Coordinator with information regarding any witnesses or supporting documents the party will rely on at the hearing at least five (5) calendar days prior to the hearing. A party will not be permitted to introduce any witnesses or evidence that have not been identified prior to the hearing. Each party shall likewise inform the Title IX Coordinator at least five (5) calendar days prior to the hearing if the party does not intend on selecting an advisor and instead, will require that the College provide one for them.

General Hearing Rules

The hearing may, but is not required to, be conducted with all parties present in the same room or location. Upon 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 decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. The College has the discretion to allow any and/or all hearing participants to appear at the hearing virtually, so long as the individual(s) can observe, hear and participate in real-time. However, witnesses shall be excluded from the hearing during testimony by other witnesses.

In general, the hearing will proceed with the Complainant and Respondent each making a statement, followed by the investigator presenting the investigation report. The Complainant and Respondent will then have the opportunity to present witnesses and other information consistent with this Policy. The decision-maker(s) will determine the relevance of, place restrictions on, or exclude any, witnesses or information. The decision-maker(s) will have the opportunity to ask questions of the Complainant, Respondent, witnesses and/or investigator. After the decision-maker(s) questions each party and witness, each party's advisor will have the opportunity to conduct cross-examination in accordance with the rules set forth herein.

The College will make and maintain an audio recording of the hearing for use of the decision-maker(s), for sanctioning and for purposes of appeal. The parties or their advisors may review the recording, but they will not be provided with a copy of the recording. In no case will cell phone or other recording devices be permitted in the hearing room unless approved by the decision-maker(s) in advance.

The decision-maker(s) may set reasonable time limits for any part of the hearing.

Cross-Examination

Each party has the right to select an advisor to conduct live cross-examination of the other party and witnesses at the hearing. All cross-examination must be done by an advisor and no party may conduct cross-examination on their own behalf. If a party does not select an advisor, the College will select an advisor for the purpose of cross-examination. The College's selection of an advisor may not be challenged.

The cross-examination will be conducted directly, verbally and in real-time, and all questions must be relevant. After a question is posed but before it is answered, the decision-maker(s) will determine if the question is relevant per the definition of relevancy contained in this Policy. A question is relevant if the question is probative of the question of responsibility. In determining relevance, the decision-maker(s) should focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. The decision-maker(s) must explain any decision to exclude a question as not relevant. A party or witness' credibility is always relevant. Cross-examination questions may, but are not required to, be submitted to the decision-maker(s) in advance of the hearing.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) cannot rely on any prior statements made by that party or witness in reaching a determination regarding responsibility. However, the decision-maker(s) cannot draw an inference regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination questions. Notably, a party's refusal to answer a question must be differentiated from their refusal to submit to cross-examination. In addition, evidence presented on behalf of that party will still be considered so long as that evidence does not contain any statement by the party.

An advisor may appear and conduct cross-examination at the hearing even if the party whom the advisor represents does not appear. In addition, a party may waive their right to cross-examination by providing the decision-maker(s) with a written waiver. Cross-examination shall be conducted in a respectful and non-aggressive manner.

Advisors

Each party has the right to select an advisor to conduct cross-examination at the hearing. The advisor may, but does not have to be, an attorney. The advisor may also attend any investigative interviews with the party, although the advisor cannot participate in the interview.

If no advisor is selected, or if the selected advisor does not attend the hearing, the College will provide the party with an advisor for the sole purpose of conducting cross-examination at no charge to the party.

The College shall take into consideration the advisor's availability in scheduling the hearing or any necessary meetings. However, the advisor shall make himself/herself reasonably available for such appearances, and no undue delays shall be permitted because of the unavailability of an advisor. In the event that the Title IX Coordinator and an advisor cannot find mutually acceptable dates within the time frames required under this Policy, a new advisor shall be made available to the relevant party.

Confidentiality

The College is obligated to keep the identity of any individual who has made a report or complaint of sex discrimination or harassment, any complainant, any person who has been reported to be the perpetrator of sex discrimination or harassment, any respondent and any witness in a Title IX grievance process confidential, except as permitted by FERPA, required by law or as necessary to conduct the hearing or proceeding.

Determination Regarding Responsibility

The decision-maker(s) will use the "preponderance of the evidence" as the standard of proof to determine whether a violation of this Policy occurred. Preponderance of the evidence means that the decision-maker(s) must determine whether the Respondent was more likely than not to have engaged in the conduct at issue in order to find the Respondent responsible for violating the Policy.

The decision-maker(s) shall consider all relevant evidence and testimony, both inculpatory and exculpatory, objectively in making a determination, although not all evidence and testimony is accorded equal weight. For example, first-hand knowledge, testimony and evidence are given the greatest weight, while testimony regarding third-party knowledge is accorded much less weight. The decision-maker shall not draw any inference regarding a party's or witness' credibility based on the party's or witness' status as Complainant, Respondent or witness. Rather, credibility determinations should be based on the plausibility of the testimony, the consistency of the testimony, the reliability of the testimony in light of corroborating or conflicting evidence or testimony and the demeanor of the party or witness.

The decision-maker(s) will find a Respondent responsible or not responsible based on a majority vote. If the decision-maker(s) find the Respondent responsible, they must then determine the sanctions to be imposed. A determination on responsibility and sanctions shall be made within ten (10) business days of conclusion of the hearing.

Once a decision has been made, the decision-maker shall prepare a written determination regarding responsibility. The written determination shall contain the following information:

- List of the allegations;
- Who performed the investigation;
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including notifications, interviews, evidence-gathering methods and hearings;
- A timeline of the process;
- Findings of fact supporting the determination;
- Conclusion regarding application of the Code of Conduct to the facts;
- What evidence was reviewed and considered;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant; and,
- The procedures and permissible bases for appeal.

The determination regarding responsibility becomes "final" either on the date that the opportunity to appeal expires, or on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed.

The written determination shall be provided to the parties simultaneously via email, or other means which would allow for simultaneous receipt.

Sanctions

The decision-maker(s) will impose sanctions that are:

- Fair and appropriate given the facts of the particular case;
- Consistent with the College's handling of similar cases;
- Adequate to protect the safety of the campus community; and,
- Reflective of the seriousness of the sexual harassment.

The decision-maker(s) will consider all relevant factors which include, but are not limited to, the nature of the conduct at issue, the circumstances accompanying the lack of consent, the Respondent's state of mind, the impact of the offense on the Complainant, the Respondent's prior disciplinary history, the safety of the College community and the sanctions imposed in similar cases.

The decision-maker(s) shall be the ultimate arbiter of what the appropriate sanction should be. In cases where the Respondent is a student, any one or more of the following sanctions may be imposed:

- Reprimand or warning;
- Disciplinary probation;
- Suspension (limited time or indefinite);

- Expulsion;
- Revocation of degree;
- Revocation of honors or awards;
- Restricting access to College facilities or activities (including student activities and campus organizations);
- Issuing a “no contact” order to the Respondent or requiring that such order remain in place;
- Dismissal or restriction from College employment;
- Changing Respondent’s academic schedule;
- Community service

In addition to any other sanction (except expulsion or revocation of degree), the College will require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the violation at issue. The College may also recommend counseling or other support services for the student.

Where the Respondent is an employee, sanctions may include discipline up to and including termination of employment. However, the determination as to the appropriate sanction for employee Respondent must be consistent with the terms of any applicable collective bargaining agreements and College employment policies.

Ongoing Measures for Complainant

Regardless of the outcome of the hearing process, a Complainant may request ongoing or additional accommodations and the College will determine whether such measures are appropriate. Potential ongoing accommodations include:

- Providing an escort for Complainant;
- Changing the Complainant’s academic schedule;
- Adjusting the Complainant’s work schedule;
- Allowing the Complainant to withdraw from or retake a class without penalty;
- Providing access to tutoring or other academic support, such as extra time to complete or re-take a class

Additional Responses

The College may also determine that additional measures are appropriate to respond to the effects of the incident on the College community. Additional responses for the benefit of the College community may include:

- Increased monitoring, supervision or security at locations or activities where the misconduct occurred;
- Additional training and educational materials for students and employees;
- Revision of the College’s policies relating the gender-based misconduct

Appeals

Either party may appeal the determination of the decision-maker(s) by filing an appeal with the Appellate Officer, which shall be the Vice President for Institutional Effectiveness, Planning and Compliance, within five (5) business days of receipt of the written determination. The five (5) day time limit for filing an appeal may not be extended. Failure to file the appeal within this time period forfeits the right to appeal and the determination becomes final and binding.

The appeal must state the grounds for the appeal. There are only three (3) permissible grounds for appeal:

1. A procedural error affecting the determination or sanction, such as a failure to follow proper procedure or making an erroneous relevance determination;
2. New information that was not reasonably available at the time of the investigation, hearing or determination that could have affected the outcome;
3. Excessiveness or insufficiency of the sanction; and,
4. Conflict of interest or bias by the Title IX Coordinator, investigator or decision-maker(s) that affected the outcome.

Disagreement with the determination or the sanction is not sufficient grounds for appeal.

If an appeal is submitted, the Title IX Coordinator will notify the other party in writing that an appeal has been filed and the grounds for the appeal. The non-appealing party may submit a written response within five (5) business days after receiving notice of the appeal. The appeal stays any sanction that has been imposed until the appeal is decided.

Appeals shall be determined based upon the record of the hearing and any written information supplied by the parties. The parties shall be provided access to the recording of the hearing. The Appeals Officer may request clarification on any issue raised on appeal from the parties, the decision-maker, the Title IX Coordinator or the investigator. The Appeals Officer shall consider the grounds raised for the appeal only and may not substitute his/her judgment for that of the decision-maker, nor shall he/she rehear the entire case.

After review of the appeal, the Appeals Officer may:

- Affirm the original determination and sanction;
- Affirm the determination and change the sanction;
- Return the matter to the hearing panel for a new hearing

In the case of employee Respondents, whether or not the sanction can be changed will depend upon the relevant collective bargaining agreement, if any.

When the grounds for appeal is that the sanction was disproportionate to the violation, the Appeals Officer may only modify the sanction if it is found to be clearly disproportionate to the gravity of the offense and/or precedent for similar offenses. Where an appeal alleges procedural errors, the matter may only be remanded if the errors were so significant that they, in effect,

denied the appealing party a fair hearing, i.e., actually affected the outcome. Likewise, when the appealing party claims a conflict of interest or bias, the matter may only be remanded if the conflict or bias is found to have affected the outcome of the hearing. Finally, if the grounds for appeal is newly discovered evidence, a new hearing is warranted only if the information was unavailable at the time of the first hearing and could have changed the outcome of the original hearing.

The Appeals Officer will notify the parties simultaneously in writing of his/her decision and the reasons therefor within ten (10) business days after receipt of the appeal. All appeal decisions are final. Once the appeal process is completed and the decision is final, the Title IX Coordinator shall oversee the implementation of any sanctions imposed.

Informal Resolution

The parties may seek to resolve a formal complaint through an informal process involving both the Complainant and the Respondent. Informal resolution is a voluntary, remedies-based process that seeks to resolve the matter through both support and accountability and may include mediation, education or restorative programs. It is designed to eliminate the prohibited conduct, prevent its recurrence and remedy its effects in a manner that meets the needs of the Complainant and maintains the safety of the College community.

A Complainant may request an informal resolution at the time the formal complaint is filed. Thereafter, either party may request to stop the investigation and pursue an informal resolution at any time prior to a determination regarding responsibility being reached. An informal resolution may only take place if both parties voluntarily agree to such, in writing. The College will never require any party to participate in informal resolution.

If the parties consent, the Title IX Coordinator shall notify the parties, also in writing, that either party may request to end the informal resolution process at any time prior to a resolution being reached and pursue, or resume, an investigation and hearing. The written notice shall additionally set forth the allegations, the requirements of the informal resolution process and any consequences resulting from participating in the informal resolution process, such as the records that could be shared or will be maintained. The informal resolution process cannot be used for complaints involving a student and an employee.

In all cases, the parties should endeavor to complete the informal resolution process within forty-five (45) days. Any time utilized for informal resolution shall not be counted in the ninety (90) day timeline of the grievance process. In the event informal resolution is unsuccessful, the time will start to run again upon resuming the grievance process.

If a proposed resolution is reached, and both the Complainant and Respondent are satisfied with the proposal, a written agreement will be prepared which will then be approved and implemented by the Title IX Coordinator if the resolution satisfies the Colleges' obligation to provide a safe and non-discriminatory environment for all students. The resolution may include discipline or other sanctions on the Respondent. Once the written agreement is approved, the disciplinary process will be concluded and the matter will be closed. There cannot

be any investigation and/or hearing on a matter that has been approved for informal resolution. Both parties shall be provided with written notice of the resolution and both shall be bound by the terms of the agreement. A party that does not comply with the terms of the agreement may be subject to discipline or other sanctions under the Code of Conduct.

If the informal resolution process is unsuccessful, the investigation and hearing process will commence or resume, as applicable. Information gathered in connection with the informal resolution process may not be used in the investigation and hearing process.

Extensions of Time

Any and/or all of the timeframes set forth in this Policy may be extended for good cause. If an extension is needed by the College, the Title IX Coordinator shall provide written notice to the parties explaining the reasons for deviating from the time frame. If an extension is requested by either the Complainant or the Respondent, the requesting party must set forth the reason a delay is necessary and provide reasonable notice so as not to overly inconvenience other parties. The investigator or Title IX Coordinator has sole discretion in granting or denying an extension request.

“Good cause” to deviate from any deadline or timeline shall include, but not be limited to, absence of a party, a party’s advisor or witness, law enforcement activity, the need for language assistance, informal resolution process, accounting for exams or school breaks, and complex cases with voluminous information.

Dismissals

If at any point during the grievance process it is determined that the allegations fail to come within the definition and/or requirements of “sexual harassment” under Title IX, the Title IX Coordinator must dismiss the formal complaint and provide the parties with a Notice of Dismissal, which shall include the reason for the dismissal and information on the appeals process. Dismissal of the complaint on this basis does not preclude the College from investigating and pursuing the allegations under the Code of Conduct.

The Title IX Coordinator may dismiss a formal complaint, or any allegations contained in the formal complaint, at any time during the grievance process if the Complainant files a written request to withdraw the formal complaint, or any allegations contained therein, or if the Respondent is no longer a student or employee of the College. The formal complaint may also be dismissed, in whole or in part, if there are specific circumstances that prevent the College from gathering the evidence necessary to reach a determination on responsibility.

Either party may appeal a dismissal, but only on the basis of conflict of interest or bias, an erroneous finding that the complaint does not come within Title IX, procedural irregularity or newly discovered evidence. The appeal must be in writing and filed with the Vice President for Institutional Effectiveness, Planning and Compliance within five (5) business days of receipt of the Notice of Dismissal. A decision on the appeal shall also be issued within five (5) days of

receipt of the appeal. The Vice President for Institutional Effectiveness, Planning and Compliance may not serve as investigator or decision-maker in the same matter.

Consolidation of Complaints

The College may, but is not required to, consolidate formal complaints alleging sexual harassment against more than one Respondent, or by more than one Complainant, or when the Respondent files a cross-complaint against the Complainant, where the allegations arise out of the same facts or parties.

Conflict of Interest or Bias

Any individual with a role in the grievance process must be free from any conflict of interest or bias against a party, or particular class of parties, in the grievance process. This includes the Title IX Coordinator, investigators, decision-makers and facilitators, among others. If a Complainant or Respondent believes that an individual directly involved in the grievance process has a conflict of interest or bias, they may make a written request to the Title IX Coordinator that the individual not participate in the process. The request shall set forth the basis of the conflict of interest or bias and must be submitted promptly after learning of the individual's involvement in the process. If a conflict of interest or bias exists, reasonable steps shall be taken to eliminate the conflict of interest or bias, or minimize it to the extent that it will have no effect on the ultimate outcome of the proceedings.

Training

The Title IX Coordinator, any person facilitating an informal resolution process and any investigator(s) and decision-maker(s) shall receive (annual) training on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct an investigation, grievance process, hearings, appeals and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. In addition, any decision-makers must receive training on any technology to be used at a live hearing, rape shield protections and on issues of relevance of questions and evidence and in creating an investigative report.

Records Disclosure

Disciplinary proceedings conducted by the College are subject to the Family Educational Records and Privacy Act (FERPA), a federal law governing the privacy of student information. FERPA generally limits disclosure of student information outside the College without the student's consent, but it does provide for release of student disciplinary information without a student's consent in certain circumstances. Any information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation into the same conduct, or required to be produced through other compulsory legal

process. Likewise, the College is required, under Title IX, to inform the Complainant whether or not it found that sexual violence occurred, any individual remedies offered or provided to the Complainant or any sanctions imposed on the Respondent that directly relate to the Complainant, and other steps the College has taken to eliminate the hostile environment caused by Respondent's actions, and to prevent recurrence.

Amendments

The College may amend this Policy as it deems necessary. Nothing in this Policy shall affect the inherent authority of the College to take such actions as it finds appropriate to further the educational mission or to protect the safety and security of the College community.