

SUBJECT: Title IX Sex Discrimination: Dating Violence, Domestic Violence, Sexual Assault,  
Stalking and Title IX Sexual Harassment

Applies to: All Students and Employees

Effective August 14, 2020

NOTE: Employees should also refer to Policy 109 Sexual Harassment Prevention for additional guidance  
Students should also refer to Policy 108 for additional guidance

## **I. NOTICE OF NON-DISCRIMINATION**

The College is committed to creating and maintaining an academic and work environment that respects each person and nurtures the trust of its mission. The College has general expectations of students and employees and expects all to behave in a manner that supports the College's Mission and Ethos, including respecting and protecting the personal rights of others.

The College seeks to create and maintain an environment free from intimidation or injury generated by sexual harassment, including sexual violence. The College will act to eliminate such practices from our community and to remedy their effects. All members of the College community are entitled to a professional working and learning environment and are accountable and responsible for maintaining a respectful and trusting environment.

The protections of this policy apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

This Policy prohibits all forms of sexual misconduct in any program or activity offered or sponsored by the College. Sexual misconduct is extremes of discrimination and wrongdoing based on one's gender, sexuality, sexual orientation, and/or gender identity or expression. Sexual Harassment is any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), and dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA). Such behavior destroys the trust and respect at the core of our academic mission. Such actions are condemned by the College and in many instances may be violations of NYS and federal laws which are referenced in other College policies. Members of the College community who are determined to have committed these acts will be subject to sanctions from the College and/or may be subject to sanctions as the result of

a criminal process. Repeat violations will result in more stringent sanctions; however, as more fully described below, permanent separation of a student or termination of employment or volunteer status may result after a first offense.

Any individual who has experienced quid pro quo, sexual harassment, sexual assault, domestic violence, dating violence, stalking, or any other type of sexual misconduct defined in this Policy has the option to make a report to law enforcement, to initiate the College's formal complaint process described in this Policy, to do both or to do neither. This Policy also describes support resources and accommodations available to members of the College community who experience sexual harassment, including sexual assault, whether or not that individual decides to pursue a formal report on campus.

When a member of the College community chooses to make a formal report of an incident of sexual misconduct, then the College will use the procedures outlined below to take prompt and appropriate action to respond. Employees who choose to make a formal report against another employee should also refer to Policy #109 as the report may also be a violation of NYS laws.

## **II. STATEMENT OF POLICY AGAINST TITLE IX SEX DISCRIMINATION<sup>1</sup> AND RETALIATION**

In compliance with Title IX, a federal law, The College does not discriminate on the basis of sex in the education programs or activities that it operates. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*) and its implementing regulations (34 C.F.R. Part 106) prohibit discrimination on the basis of sex in education programs and activities.

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Education Program or Activity receiving Federal financial assistance.

Title IX requires that colleges and universities maintain an environment free from Title IX Sex Discrimination for all faculty, staff, and students. Under Title IX, discrimination on the basis of sex is Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Title IX also prohibits Retaliation.

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<sup>1</sup> The Title IX regulations found at 34 CFR Part 106 refer to the five forms of Title IX Sex Discrimination (1) Title IX Sexual Harassment; (2) Sexual Assault; (3) Dating Violence; (4) Domestic Violence; and (5) Stalking as Title IX Sexual Harassment, even though one of the five forms of sexual harassment is also called sexual harassment. For clarity and to avoid confusion, this Policy refers to the five forms of prohibited conduct as Title IX Sex Discrimination. Each type of conduct is defined separately in this Policy (*See* Glossary at Section XVI).

Title IX Sexual Harassment is prohibited by Title VII of the Civil Rights Act of 1964 and by the New York State Human Rights Law. Title IX Sexual Harassment is also prohibited by the Violence Against Women’s Act, and NYS Education Law 129B.

Inquiries about this Policy and/or the application of Title IX and its regulations may be referred to:

Monika Robertson  
Director of Risk management  
Title IX Coordinator  
Rinker, Lower Level, Room 122  
585-594-6222  
[Robertson\\_Monika@roberts.edu](mailto:Robertson_Monika@roberts.edu)

Ruth Logan  
VP for Student Life & Organizational  
Development  
Title IX Administrator  
Rinker, Lower Level, Room 127  
585-594-6532  
[loganr@roberts.edu](mailto:loganr@roberts.edu)

Title IX Webpage: <https://www.roberts.edu/student-experience/title-ix/>

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Inquiries about the application of Title IX and its regulations may be referred to:

Assistant Secretary for Civil Rights  
U.S. Department of Education, Office for Civil Rights  
ocr@ed.gov  
1-800-421-3481

### **III. SCOPE OF THIS POLICY**

This Policy on Title IX Sex Discrimination (Policy) applies to all Employees (faculty, staff, all other employees) and students. This Policy only addresses Title IX Sex Discrimination (Discrimination), as defined in this Policy. All other protected status allegations (including non-Title IX sex discrimination and non-Title IX sexual harassment) are addressed in other College policies, including other applicable discrimination policies and procedures, such as the Non-Discrimination Policy, Student Code of Conduct, Faculty Handbook, and Employee Handbook.

Title IX Sex Discrimination is defined as conduct:

- (1) *On the basis of sex,*
- (2) *That occurs within the College's Education Program or Activity,*
- (3) *Within the United States, and*
- (4) *Involves*
  - (a) a College Employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (Quid Pro Quo);
  - (b) unwelcome conduct that is 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 (Hostile Environment);
  - (c) Sexual Assault;
  - (d) Dating Violence;
  - (e) Domestic Violence; or
  - (f) Stalking.

All allegations of Title IX Sex Discrimination will be addressed according to this Policy.

The College may take action against third Parties who engage in conduct prohibited by this Policy in connection with a College Education Program or Activity. In such circumstances, the College will determine whether to apply this Policy or another policy or procedure.

This Policy applies when any employee and student of the College is alleged to have engaged in Title IX Sex Discrimination as defined by this Policy. To the extent this Policy is inconsistent with any provisions of any faculty or Employee handbook, policy or procedure, because this Policy on Title IX Sex Discrimination is mandated by federal law, this Policy shall prevail. Federal law requires the College to use the same Standard of Evidence in all matters alleging Title IX Sex Discrimination, which, therefore, fall within this Policy. The College has no discretion to do otherwise.

All Employees who have experienced Title IX Sex Discrimination, who have provided a Report alleging Title IX Sex Discrimination, or have been alleged to have engaged in Title IX Sex

Discrimination can seek confidential assistance through Agape Counseling Services or Restoration Counseling Services.

#### **IV. DEFINED TERMS**

This Policy uses many defined terms, indicated by the capitalization of the first letter(s) in the term. All defined terms are included in a Glossary at the end of the Policy. The definitions in the Glossary are important to a complete understanding of this Policy.

#### **V. RESPONSIBILITIES OF THE TITLE IX COORDINATOR AND DEPUTY TITLE IX COORDINATOR**

The Title IX Coordinator coordinates the College's efforts to comply with Title IX, including overseeing this Policy and the publication and dissemination of information required by Title IX. The Title IX Coordinator's responsibilities include: (1) receiving and responding to Reports of conduct that may constitute a violation of this Policy; (2) coordinating the effective implementation of Supportive Measures; (3) designating Investigators, Facilitators, and Decision-makers to act pursuant to the Grievance Process; (4) ensuring that the technology needed to conduct and record hearings is available; (5) implementing effectively any Remedies or discipline imposed by a Decision-maker upon a finding of a violation of this Policy; (6) complying with the record-keeping requirements of this Policy; and (7) Hearing Board Chair.

The Title IX Administrator supports the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator's designee to carry out any response, action, initiative, project or other responsibility outlined in this Policy. An individual requiring emergency support or response should contact Campus Safety at 585-594-7777 or another appropriate Emergency Support Resource detailed in Section VIII below.

#### **VI. OPPORTUNITIES FOR REVIEW OR APPEAL**

This Policy provides individuals with opportunities to seek review of or appeal from a decision of the College. Information regarding review of an Emergency Removal can be found in Section IX(E). Information regarding appealing the dismissal of a Formal Complaint can be found in Section IX(B)(b), IX(B)(c), and X(J)(2). Finally, information related to appealing a Written Determination can be found in Section XI.

## **VII. REQUEST TO REMOVE TITLE IX COORDINATOR, AN INVESTIGATOR OR HEARING BOARD MEMBER**

Parties have the right to request that someone other than the Title IX Coordinator oversee the Grievance Process or that the Title IX Coordinator remove an Investigator or member of the Hearing Board. Such requests must be based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

### **(A) Request to Remove the Title IX Coordinator**

A request to remove the Title IX Coordinator should be submitted in writing to the person to whom the Title IX Coordinator reports, which is Ruth Logan, Title IX Administrator, and as soon as a Party becomes aware of any such grounds for removal. The Title IX Administrator will determine whether to delegate the Title IX Coordinator duties to someone else.

### **(B) Challenge to an Investigator**

A challenge to an Investigator must be raised in writing within two (2) Business Days of receipt of the Notice of Investigation. The Title IX Coordinator will determine whether to remove the Investigator. If the Investigator is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If an Investigator is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Investigator.

### **(C) Request to Remove a Hearing Board Member**

A challenge to a member of the Hearing Board must be raised in writing within two (2) Business Days of receipt of the Notice of Live Hearing. The Title IX Coordinator will determine whether to remove the Hearing Board member. If the Hearing Board member is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If a Hearing Board member is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Hearing Board member.

## **VIII. REPORTING POTENTIAL VIOLATIONS OF THIS POLICY, INCLUDING FORMAL COMPLAINTS**

The College strongly encourages anyone who has information about a potential violation of this Policy, including Retaliation, to report to the Title Coordinator or another Campus Official. Any person may make a Report of a potential violation to the Title IX Coordinator in person, by mail, by telephone or by electronic mail. Reports by mail, telephone or electronic mail may be made at any time, including outside of regular business hours.

A Report does not constitute a Formal Complaint. Members of the College community can find a Formal Complaint form online at <https://www.roberts.edu/student-experience/title-ix/how-to-report/>. A completed Formal Complaint with an individual's physical or electronic signature can be submitted to the Title IX Coordinator through the web or by electronic mail or mail. An individual can also prepare a document with the required contents of a Formal Complaint and submit it to the Title IX Coordinator through electronic mail, mail or an in-person meeting. Finally, an individual may speak with the Title IX Coordinator prior to submitting a Formal Complaint, and the Title IX Coordinator can assist in filling out a Formal Complaint with the understanding that the Formal Complaint cannot be accepted without the Complainant's signature.

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than **ninety (90) school/calendar/business days** after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

Any Campus Official who receives information or who otherwise has information about a potential violation of this Policy is required to share the information received, in full, with the Title IX Coordinator.

The College encourages individuals to make contact with the resources below as soon as the individual is prepared to make a report of the incident.

- Monika Robertson, the Title IX Coordinator, at 585.594.6222 or emailing [robertson\\_monika@roberts.edu](mailto:robertson_monika@roberts.edu);
- Campus Safety by calling 585.594.7777; or on-campus extension 7777
- Local law enforcement by dialing 911;
- New York State Police's 24/7 hotline staffed by specially-trained responders at 1.844.845.7269

The College take seriously when alleged sexual misconduct occurs and to provide safety and solace, which may include medical treatment, counseling, and supportive measures. All victims of sexual misconduct have the right to determine whether or not they wish to formally file a report with the College or law enforcement. The College strongly encourages individuals who are considering whether to make a formal report to seek out one of the confidential resources on or off campus in order to have a safe and confidential venue to discuss options.

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the College's officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

This document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

In general, the Wellness Center Counselors, Chaplain, and Student Health Services Staff are confidential reporters who are not required to report incidents of sexual misconduct. Their responsibility is to provide assistance. **All other campus faculty and staff are considered responsible employees who are required to report sexual harassment and misconduct, including sexual violence, of which they become aware to the Title IX Coordinator, and can assist students in reporting incidents of sexual misconduct.**

(A) Privileged and Confidential Resources

**On campus**, these confidential resources will not report alleged violations of this Policy to College officials or law enforcement without your permission, except for as dictated by law, such as when an individual is a threat to him or herself or others and the mandatory reporting of child abuse. At the College, this includes:

- The Counseling Center, located in the upper level of the Voller Athletic Center (across from the mailroom). You can reach the Counseling Center by calling 585.594.6882 (or Campus Safety at x. 7777 or 585.594.7777). Counselors can provide confidential support for you, including informing you of common emotional reactions and discussing coping methods that may assist you immediately following the assault and later. Talking about your concerns with a counselor in a safe and supportive environment may help you sort through your feelings and decide what to do. You do not need to disclose your name if you call the Counseling Center for information. Counselors will not reveal your identity to anyone without your permission. When classes are in session, the Counseling Center is open Monday through Friday from 9:00 a.m. to 5:00 p.m. During the semester there is a counselor on-call for after- hours emergencies. You can access the counselor on-call through your Assistant Dean of Students or Campus Safety. The Counseling Center is

closed over breaks and during the summer. Visit the website for more information:  
<http://www.roberts.edu/student-experience/counseling-center.aspx>

- The Campus Pastor can serve as a confidential resource. You can contact the Pastor by visiting the office, located in the upper level of the Voller Athletic Center or calling 585-594-6530.
- The Student Health Center, located in Suite 231 of upper Voller Athletic Center. You can also reach the Health Center by calling 585.594.6360. Health Center staff can assist you with initial assessment after an incident of sexual violence. In Fall and Spring semesters, Physician Assistants are in the Health Center from 8:00 – 11:30 a.m. on Monday, Wednesday, and Friday and from 1:30 -5:00 p.m. on Tuesday and Thursday. During the Summer, students may still call the Health Center Monday through Wednesday from 8:00 a.m. to 1:00 p.m. for referrals to other health care providers and resources. Visit the website at <https://www.roberts.edu/student-experience/health-center.aspx>

**(B) Off-campus options to confidentially disclose sexual violence include:**

- Counselors and Advocates - Members of the College community may contact any of the following local resources for confidential support:
  - Restore Sexual Assault Service’s 24 hour/day, confidential rape crisis hotline:
    - 585.546.2777 (Monroe County)
    - 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties)
  - Willow Domestic Violence Center’s 24 hour/day confidential hotline (585.232.7353) for victims of domestic violence. Willow offers a shelter, counseling, support groups, children’s services, court advocacy, Latina services, dating violence education, and transition programs. All services are free.
  - Safe Journey (585.425.1580), which serves women and children in transition from domestic violence who need individual or group counseling, advocacy or community referrals as they heal from abuse.
  - The Victim Resource Center of the Finger Lakes, Inc., a private, non-profit domestic, sexual, stalking, dating violence and child abuse services agency that provides a 24 hour a day/7 day a week bilingual (Spanish/English) toll-free hotline at 866.343.8808 or 800.456.1172.
- Medical Care - Individuals who have experienced sexual violence should visit the Student Health Center, a local Emergency Department or the local medical provider of their choice for confidential emergency care, whether or not they have any intention of pursuing an on- campus complaint or complaint with law enforcement. (Visits to a

hospital, urgent care center, or other medical provider are subject to a fee after insurance coverage.) An individual considering campus and/or law enforcement options against a Respondent (accused individual) should visit a Sexual Assault Forensic Examiner (SAFE) Nurse (also referred to as a Sexual Assault Nurse Examiner). SAFE Nurses provide free medical care for victims of sexual assault, and are specially trained in conducting sexual assault exams and collecting and preserving forensic evidence of the assault for possible prosecution of the assailant. Obtaining medical care or a sexual assault examination in no way binds anyone to pursue a complaint process. Options for seeking medical care include:

- proceed directly to the Emergency Department at Strong Memorial Hospital (601 Elmwood Avenue in Rochester / 585.275.4551), which has a Sexual Assault Forensic Examination (SAFE) Center; *or*
- proceed directly to the Emergency Department at Highland Hospital (1000 South Avenue in Rochester / 585.341.0725) to access a SAFE Nurse; *or*
- call 585.922.4000 to access a SAFE Nurse at Rochester General Hospital (1425 Portland Avenue in Rochester); *or*
- call Restore Sexual Assault Service's 24 hour/day, confidential rape crisis hotline at 585.546.2777 (Monroe County) or 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties) for assistance locating a SAFE Nurse at other area hospitals and/or to request an escort to the hospital; *or*
- call Campus Safety at 585.594.7777 or dial 7777 from a campus phone for assistance; *or*
- call 911 for an ambulance.

A medical exam conducted by a SAFE Nurse (commonly referred to as a "rape kit") has two goals: (1) to diagnose and treat the full extent of any injury or physical effect and (2) to properly collect and preserve evidence. The exam may include testing and prophylactic treatment for HIV/AIDS, sexually transmitted infections ("STIs"); a vaginal examination; examining for injuries; and drawing blood. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Gathering such evidence does not commit an individual to pursue legal action against the assailant, but is important for preserving that option.

- If you suspect that you may have been given a rape drug, inform the hospital or clinic where you receive medical care and/or ask to provide a urine sample. Rape drugs, such as Rohypnol and GHB, are more likely to be detected in urine than in blood.

Hospitals are not required to report non-identifying information to the College or anyone else. However, hospitals providing care to individuals reporting sexual assault are required to:

- collect and maintain the chain of custody of sexual assault evidence for not less than 30 days *unless* the patient signs a statement directing the hospital not to collect it;
- advise the individual seeking medical treatment related to sexual assault of the availability of local rape crisis services or victim assistance organizations to accompany the individual through the sexual offense exam;
- contact a local rape crisis or victim assistance organization to establish the coordination of non-medical services to individuals reporting sexual assault who request such coordination and services; and
- provide emergency contraception upon the patient's request.

Even if an individual who has experienced sexual violence does not have injuries requiring emergency attention, the College encourages that individual to seek medical care as soon as possible.

Most health care providers will encourage an individual seeking medical treatment related to a sexual assault to authorize collection of evidence. (Note: If the individual has not seen medical personnel at the time a report is received by the College, the individual will be immediately advised to do so. The College will provide transportation, if needed.) Be aware that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The NYS Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found at: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1- 800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

Please note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

The College will provide assistance to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims in the community.

## **IX. RESPONSE TO POTENTIAL VIOLATIONS OF THIS POLICY**

When the Title IX Coordinator or a Campus Official receives a Report, the College will respond by: (A) equitably offering Supportive Measures to the Complainant and Respondent, whether or not a Formal Complaint is filed; and (B) refraining from imposing upon Respondent disciplinary

sanctions or other actions that are not Supportive Measures unless and until the Respondent is found responsible for a violation of this Policy through a completed Grievance Process. Notwithstanding the foregoing, the College may impose an Emergency Removal or Administrative Leave as provided in Sections IX(E) and IX(F) below.

**(A) First Steps**

*(1) Purpose*

When the Title IX Coordinator receives a Report of alleged Title IX Sex Discrimination or a Formal Complaint alleging Title IX Sex Discrimination, the Title IX Coordinator will seek to gather additional information regarding the alleged Title IX Sex Discrimination, to evaluate any risk of harm to individuals or to the campus community, and to address the immediate physical safety and emotional well-being of the Complainant.

*(2) Evaluating Risk of Harm*

The Title IX Coordinator will take necessary action to address any risk of harm identified by the Title IX Coordinator, including implementation of Supportive Measures for either or both Parties, as appropriate, and actions designed to protect the larger campus community. Supportive Measures are described in Section IX(D). Any decision to remove a Respondent from campus pending the Grievance Process will follow the process discussed in the Emergency Removal section of this Policy (Section IX(E)). At the Title IX Coordinator's discretion, one or more other Campus Officials (including but not limited to Dean of Students or Director of Campus Safety may also be included in the initial assessment or in evaluating information gathered in the initial assessment).

*(3) Notifications<sup>2</sup>*

During this discussion, the Title IX Coordinator will provide the following information:

- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- notify the Complainant of the importance of preservation of evidence;
- provide the Complainant with information about on- and off-campus resources;

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<sup>2</sup> Under the Clery Act, The College must assess reported conduct for the need for a timely warning and, as applicable, enter the Report into the College's daily crime log.

- notify the Complainant that the institution can provide assistance in initiating legal proceedings in family court or civil court;
- notify the Complainant of the range of Supportive Measures available with or without filing a Formal Complaint;
- provide the Complainant with an explanation of the procedural options; and
- explain the College’s policy prohibiting retaliation.

**(B) Determination of Next Step**

After assessing the information gathered, the Title IX Coordinator will take one of the following steps regarding the Grievance Process:

**(a) Initiate Grievance Process**

If the Title IX Coordinator determines that the alleged misconduct falls within this Policy and a Formal Complaint has already been submitted, the Title IX Coordinator will proceed with one of the options described in Section X(F) below.

If a Formal Complaint has not yet been submitted, the Title IX Coordinator will advise the Complainant that a Formal Complaint is required to initiate an investigation. The Title IX Coordinator will provide the Complainant a Formal Complaint form (or link to a website where one can obtain and submit a Formal Complaint through the web, by email or by mail) for the Complainant’s completion and signature. Once a signed Formal Complaint is submitted, the Title IX Coordinator will proceed with one of the options described in Section X(F) below.

The Title IX Coordinator may initiate the Grievance Process without a Formal Complaint signed by the Complainant under the circumstances described in Section IX(C) below and under any other circumstances that, in the Title IX Coordinator’s discretion, require the institution to investigate the allegations underlying a Report.

**(b) Dismiss Formal Complaint**

A Notice of Dismissal will be issued to the Complainant if a Formal Complaint has been submitted but the Title IX Coordinator determines the alleged misconduct does not fall within this Policy because: the Complainant is not participating in or attempting to participate in a College Education Program or Activity; the conduct did not occur within the College’s Education Program or Activity; the conduct did not occur within the United States; or the Respondent is no longer enrolled or employed by the College. The Notice of Dismissal, which will be issued to the Complainant within two (2) Business Days of the Title IX Coordinator’s determination, will

include the reasons for the dismissal. The Complainant has the right to Appeal from dismissal of a Formal Complaint on any of the following grounds:

- Procedural Irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter; and/or,
- 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

Appeals from a Notice of Dismissal must be submitted in writing to Ruth Logan, Title IX Administrator within three (3) business days from delivery of the Notice of Dismissal and in the method described in the Notice of Dismissal.

(c) Refer for Action Pursuant to Different College Policy

With or without a Formal Complaint, when the Title IX Assessment concludes with a determination that the alleged conduct does not fall within the scope of this Policy but involves conduct that, if found to have occurred, violates another College policy, the matter will be referred for further action. The determination regarding next steps will be communicated to the Parties in writing. When a Formal Complaint has been submitted, this information will be included in the Notice of Dismissal. The Parties have the right to submit an Appeal from dismissal of a Formal Complaint on the same grounds and in the same manner explained in (b) above.

**(C) Weighing a Complainant's Request Not to Proceed with the Grievance Process**

*(1) General Description of Process*

If a Complainant requests that the College refrain from proceeding with the Grievance Process, the Title IX Coordinator may still decide that proceeding with the Grievance Process is necessary. The Title IX Coordinator must weigh such a request against the College's obligation to provide a safe, non-discriminatory environment for all community members and will confer with the Complainant when reaching a determination whether to proceed.

*(2) Decision to Proceed*

If the College determines that it must proceed with the Grievance Process, the Title IX Coordinator will notify both Parties prior to commencing any investigation (as described further below in Section X(F)(1)). In the event the Title IX Coordinator decides to proceed, the Complainant will still be treated as a Party within the Grievance Process. Even a non-participating Complainant will be offered Supportive Measures, which will be reviewed and evaluated on an ongoing basis, and

will be provided information regarding their right to report a crime to campus or local law enforcement and with assistance if they wish to do so.

**(D) Supportive Measures**

Promptly after receipt of a Report, the Title IX Coordinator will contact the Complainant and Respondent (if identified or identifiable based upon the Report) to discuss the availability of Supportive Measures. Supportive Measures are available with or without the filing of a Formal Complaint. In evaluating the Supportive Measures to be provided, the Title IX Coordinator will make an individualized determination, considering Complainant's wishes and other relevant factors, of the non-disciplinary, non-punitive measures that will be provided to the Complainant and Respondent to restore or preserve equal access to the College's Education programs or Activities, to protect the safety of the Parties, and/or to deter Title IX Sex Discrimination.

All Supportive Measures will be provided without fee or charge and without unreasonably burdening the other Party. Supportive Measures will be maintained as confidential by the College to the extent that confidentiality will not impair the ability to provide the Supportive Measures.

Examples of Supportive Measures that may be implemented by the College include but are not limited to:

- Academic extensions or adjustments
- Campus escort services
- Changes in housing
- Counseling
- Increased security or monitoring of certain areas of the campus
- Modifications of class or work schedules
- Mutual restrictions on contact between the Parties

Appropriate Supportive Measures will also be available to Employees.

**(E) Emergency Removal of a Respondent**

The College may implement emergency removal of a Respondent, whether or not a Formal Complaint has been submitted, if there is an immediate threat to the physical health or safety of any student or other individual that arises from allegations of conduct that could constitute a violation of this Policy.

Prior to implementing an emergency removal, the College will first gather information to undertake an individualized safety and risk analysis. The analysis will be conducted by an individual who is free from bias or conflict of interest; who has relevant knowledge and experience; and who will not be involved in any later Grievance Process related to the student who is being evaluated for potential removal.

(1) *Factors to be Considered*

The emergency removal analysis will focus on the specific Respondent at issue and examine the specific circumstances arising from the allegations of Title IX Sex Discrimination that potentially pose an immediate threat to a person's physical health or safety.

To evaluate the presence of an "immediate threat," the College will consider a Complainant's stated subjective fear and will also apply an objective reasonable person standard. The College will consider the student's propensity, opportunity, and ability to carry out a stated or potential threat. The analysis will evaluate whether Supportive Measures are a more appropriate and less restrictive means to negate or sufficiently minimize the likelihood of a threat being carried out. As part of its analysis, the College may rely on objective evidence and current medical knowledge, and may consult with a licensed evaluator to analyze the information gathered. The College shall also consider Respondent's rights, if any, under applicable federal and/or state disability laws.

In addition, the relationship between a threat and the physical health or physical safety of any student or other individual will also be carefully evaluated. In some but not all cases, threatening speech or virtual interactions without an associated action may rise to the level of a threat to physical health or physical safety. If the threat a Respondent poses is in the nature of potential emotional impact only, the College will instead focus on identifying appropriate Supportive Measures.

The College will also closely examine whether the emergency created by the immediate threat arises from the allegations of conduct that could constitute Title IX Sex Discrimination under this Policy. As an example, an immediate threat to Complainant's physical safety is likely present when a Respondent threatens physical violence against the Complainant in response to the Complainant's allegations of verbal harassment by the Respondent. Threats of physical self-harm will be addressed under separate, applicable policies. If the individualized safety and risk analysis results in a determination that a Respondent's actions pose an immediate and identified threat, but do not arise from allegations of Title IX Sex Discrimination, the College will respond pursuant to other applicable policies and/or procedures.

The College's assessment of the appropriateness of emergency removal will account for its multiple potential impacts, including: whether providing the Complainant Support Measures will be sufficient to ensure equal educational access; the adverse impacts of separating a Respondent

from educational opportunities and benefits; and the protection of the health and safety of the College's community. When assessing an emergency removal, the College will also consider the anticipated timeline of an investigation and hearing. Given these evaluations are necessarily fact specific, in some cases the College may determine that restricting a Respondent's participation in specific programs or activities will adequately address the situation.

(2) *Emergency Removal is Not Discipline nor a Determination of Responsibility*

At all stages of the process, the College will ensure that the emergency removal will not impose a premature sanction on the Respondent or circumvent the Grievance Process. An emergency removal does not equate to a Determination of Responsibility for a Policy violation and will not result in a presumption of responsibility in any subsequent Grievance Process.

(3) *Ongoing Evaluation*

The College will continually evaluate whether the presence of an immediate threat to physical health or safety of a student or another individual has remained the same or changed such that the removed student can be safely returned to programs or activities in a partial or complete manner.

(4) *Notice of Emergency Removal and Opportunity to Request Review*

In the event the College determines that emergency removal of a Respondent is appropriate, the Respondent will be notified in writing within two (2) Business Days of the removal decision. This written notice will include details about the specifically identified emergency threat of physical safety or harm underlying the decision, as well as information about the Respondent's immediate opportunity to request review of the Emergency Removal decision.

**(F) Placement of Employee on Administrative Leave**

In the event a Formal Complaint alleges conduct that could constitute Title IX Sex Discrimination and identifies an Employee as Respondent, the College may decide to place the Respondent on administrative leave, in emergency and non-emergency situations. The purpose of such an administrative leave is to allow a temporary separation of the Employee while the Grievance Process is ongoing. The College will determine the terms and conditions of the leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, Americans with Disabilities Act, and all other applicable employment laws.

The College may place a student-employee on administrative leave from on-campus employment in a non-emergency situation in order to provide Supportive Measures to a Complainant. The College will make its best efforts not to unreasonably burden the Respondent with placement on leave and will fully evaluate whether there are alternative and less restrictive measures that would

be more appropriate. In most situations, a student-employee placed on administrative leave from on-campus employment as a Supportive Measure will continue to receive pay until the conclusion of the Grievance Process.

## **X. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS**

### **(A) Overview**

All entitlements established in this section apply equally to both Parties. This process applies when a Formal Complaint is signed and submitted, whether by a Complainant or the Title IX Coordinator on behalf of the College. This process is grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility at the conclusion of this process. The standard of review for determinations regarding responsibility at the conclusion of this process is the preponderance of evidence.

Formal Complaints are resolved either through Live Hearing or Informal Resolution, briefly described as follows:

**Live Hearing:** The Live Hearing process, and the investigation process that precedes the Live Hearing, are described at Sections X(I) (Investigation) and X(K) (Live Hearing). The standard of review for determinations regarding responsibility at the conclusion of this process is the preponderance of evidence.

**Informal Resolution:** a *voluntary* process for resolution of Formal Complaints. The Title IX Coordinator or any Party may propose or request consideration of Informal Resolution. During the Informal Resolution process, a Facilitator(s) will attempt to help the Parties come to an agreement about how to resolve a Formal Complaint. The Informal Resolution process is available to the Parties any time after a Formal Complaint is filed and before the Written Determination is issued by the Hearing Board, except in matters in which a student Complainant alleges Title IX Sex Discrimination by an Employee. Participation in the Informal Resolution process is entirely voluntary and all Parties must agree to participate. The Informal Resolution process is more fully described in Section X(F)(2).

### **(B) Length of Process**

The College seeks to resolve all Reports of Title IX Sex Discrimination promptly, thoroughly, fairly, and equitably. The timeframes which the College strives to meet can be found at Section XIII. The College will inform the Parties at regular intervals of the status of the Grievance Process. Circumstances may arise that require the extension of anticipated time frames. Such circumstances

may include the complexity of the allegations, the number of Witnesses involved, the availability of the Parties, Witnesses, or others involved, the effect of a concurrent criminal investigation, breaks or other closures of campus, faculty sabbatical, approved employee leave or unforeseen circumstances. In the event timelines are modified, the College will provide written notification to the Parties.

**(C) Privacy of Process**

The College will keep confidential the identity of any individual who has made a Report or Formal Complaint, and the identity of any Complainant, Respondent, and Witness except as permitted by FERPA, required by law, or as necessary for the Institution to take action under this Policy.

**(D) Participation in Grievance Process is Voluntary**

Neither Parties nor Witnesses are required to participate in the Grievance Process, but without their live testimony at the hearing, the Hearing Board cannot rely upon their Statements. The College may not threaten, coerce or intimidate a Party or Witness into participating, nor may the College retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

**(E) Right to an Advisor and Advisor Role**

Each Party has the right to choose an Advisor of their choice to assist and advise them (at the Party's own expense, if the Advisor is paid). Each Party has the right to be accompanied by their Advisor throughout the Grievance Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role. Advisors:

1. provide support to the Party but do not serve as a proxy voice for the Party;
2. can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the Party should ask for a break in the meeting, interview or Live Hearing;
3. may not make statements or arguments or answer questions on behalf of Parties during meetings, interviews or during the Live Hearing;
4. may not speak during the hearing process, except in connection with Cross-examination Questions, described in Section X(K)(9);
5. cannot direct the Party how to answer a question; and
6. must conduct themselves quietly and professionally, must not disrupt any meeting, interview or proceeding, and must comply with any rules of decorum imposed by the College.

An Advisor who does not follow the guidelines above may be removed from the meeting, interview or Live Hearing.

Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisors and any change in their Advisor. If a Party does not select an Advisor and the matter proceeds to a Live Hearing, an Advisor will be appointed by the College, at no fee to the Party, to ask Cross-examination Questions on that Party's behalf.

**(F) After a Formal Complaint is Accepted**

Once a Formal Complaint is signed, submitted, and approved to proceed by the Title IX Coordinator, the College will take one of the following actions:

*(1) Initiate an Investigation* (see Section X(I) below)

In these circumstances, the Title IX Coordinator will issue a Notice of Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. This Notice of Investigation will include:

- (a) Notice of these grievance procedures, including the Informal Resolution process, and a copy of this Policy.
- (b) The conduct alleged to violate this Policy, and the date and location of the alleged incident, if known.
- (c) Known Parties involved in the alleged incident
- (d) A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the process.
- (e) Notice of the Parties' right to an Advisor of choice, who will be permitted to accompany them to investigation meetings, interviews, and any hearing and to review materials provided to their advisee throughout the process. The role of Advisors during the Grievance Process is explained in Sections X(E), X(K)(4), and X(K)(9) of this Policy.
- (f) Notice of and citation to the College's prohibition on knowingly making false Statements or submitting false information during a College process.
- (g) The name(s) and title(s) of the Investigator(s).

If during the course of an investigation, new or additional allegations arise that require investigation, the College will send the Parties an updated Notice of Investigation revising the scope of the Investigation. Any objection to a named Investigator must be submitted as provided in Section VII(B) above.

(2) *Informal Resolution*

The Informal Resolution process will be followed when a signed Formal Complaint has been accepted and: (a) the Title IX Coordinator suggests that an Informal Resolution may be an appropriate course of action and the Parties agree to that approach, or (b) a Party requests that the Title IX Coordinator consider allowing an attempted resolution of the Formal Complaint through the Information Resolution process, the Title IX Coordinator finds the matter appropriate for Informal Resolution, and the Parties agree to proceed in that manner. The Informal Resolution process is available to the Parties any time after a Formal Complaint is filed and before the Written Determination is issued by the Hearing Board. Participation in the Informal Resolution process is entirely voluntary and all Parties must agree to participate. Information Resolution is not available when a Formal Complaint alleges that a College employee engaged in Title IX Sex Discrimination toward a student.

(a) Notice

Prior to beginning the Informal Resolution process, the College will provide the Parties notice of the allegations of the Formal Complaint and will direct the Parties' attention to this provision of the Policy for an understanding of the requirements of this process and the consequences of participating in this process. The notice will also advise of the requirement that each Party must sign the "Consent to Informal Resolution Process" form and submit it to the Title IX Coordinator before the Informal Resolution process can begin.

(b) Commencement of Informal Resolution Process and its Effect on the Grievance Process

When all Parties to a Formal Complaint have submitted the consent forms, the College will pause the Grievance Process, including any ongoing investigation or hearing, for a period of fourteen (14) days (unless a shorter or longer time is set by the Title IX Coordinator), to allow the Parties to proceed with the Informal Resolution Process. The time period during which the Grievance Process is paused for the Informal Resolution process shall not count toward the time periods set forth in Section XIII below.

The Facilitator(s) may not be called to serve as a Witness in the Grievance Process.

(c) The Process

The Facilitator(s) will decide the process and procedures to be used in the Informal Resolution process but shall not take actions inconsistent with this Policy. The Facilitator(s) will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during the Informal Resolution process. The Facilitator(s) may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution.

The Facilitator(s) shall not require the Parties to meet together, in person; the Parties will meet together only if they choose to do so.

(d) Informal Resolution Agreements

If the Parties reach an agreement, the Facilitator(s) shall create a written agreement that lists the terms of the Informal Resolution for the Parties to sign.

A Party may withdraw from the Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution of a Formal Complaint.

(e) Title IX Coordinator Approval of Agreement

The Title IX Coordinator will defer to the Parties' agreement unless the Title IX Coordinator determines that it is impractical, unduly burdensome or inconsistent with the College's obligations under this Policy, Title IX or another applicable law or policy. If the Title IX Coordinator declines to approve the Parties' written agreement on one of these bases, with the assistance of the Facilitator(s), the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, the College shall resume the Grievance Process.

(f) Recordkeeping

When a Formal Complaint is resolved through an approved written agreement after Informal Resolution, the College shall retain the Formal Complaint, any documents prepared in the course of the Grievance Process, any documents prepared in the course of the Informal Resolution process, the final approved written agreement documenting the Informal Resolution, and any documentation of the implementation of the Informal Resolution. Those documents shall be retained in accordance with the Recordkeeping requirements set forth in this Policy at Section XIV.

**(G) Concurrent Law Enforcement Activity**

When the College receives a Report or Formal Complaint alleging Title IX Sex Discrimination to which it has determined it must respond through its Grievance Process, the College's process continues regardless of whether a Complainant has made or decides to make a report to law enforcement. The filing of a report with law enforcement, or an ongoing law enforcement investigation or proceeding, does not relieve the College of its obligation to address the Complaint through its Grievance Process. At the College's discretion, the College may temporarily pause its investigation at the request of law enforcement. In that circumstance, the Title IX Coordinator will send written notice to both Parties explaining the reason for pausing the investigation. Extension of timelines at the request of law enforcement typically will not exceed ten (10) days unless law enforcement specifically requests and justifies a longer extension. The College and law enforcement may coordinate their investigations, including sharing information to the extent it is prudent and feasible.

**(H) Consolidation of Certain Formal Complaints**

The College may consolidate its processing of Formal Complaints in appropriate circumstances, such as when allegations arise out of the same facts or circumstances and multiple Complainants allege misconduct by one Respondent, multiple Complainants allege misconduct by more than one Respondent, one Complainant makes multiple allegations against one Respondent or a Respondent makes a cross-complaint against the Complainant. All parties will be notified in writing of a decision to consolidate Formal Complaints.

**(I) Investigation**

The College's investigation process is designed to (1) allow for the thorough, impartial, and reliable gathering of information and (2) result in a comprehensive investigation report summarizing relevant, admissible evidence. The College strives to assemble and share with the Parties all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint (*see* Section X(I)(3) below) within 60 Business Days of receipt of Notice of Investigation, understanding that numerous issues arise during investigations that may justify a good cause extension of the timeline as described in Section X(B) above.

*(1) Assignment of Investigator*

The Title IX Coordinator will supervise the investigation, starting with determining who will serve as Investigator. The Investigator may be: a College Employee or Employees; an external Investigator or Investigators; or a team of Investigators that pairs an external Investigator with a College Employee.

(2) *Process Overview*

All Investigators will conduct the investigation with a presumption that the Respondent is not responsible and will investigate free of bias or any conflict of interest. The Investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator(s) will provide advance written notice to Parties of the date, time, location, participants, and purpose of any requested meeting(s).

Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The burden of gathering relevant, admissible information rests on the College. The Parties will have an equal opportunity to submit evidence and suggest Witnesses (including fact and expert Witnesses). Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

The Investigator(s) will decide which individuals to interview based on the information the Investigator(s) gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator may ask the Witnesses to describe the information the Party expects the Witness to provide. The Title IX Coordinator may also direct that additional interviews be conducted.

The Investigator(s) will not ask questions or gather information or documents protected by a legally recognized privilege, including treatment records of a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Grievance Process from the person protected by the privilege. Further, the Investigator(s) will not seek information about a Complainant's sexual predisposition and will only allow submission of or pursue information about a Complainant's prior sexual behavior if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to establish Consent.

(a) *Confidentiality Cannot be Promised*

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence.

(b) Parties' Rights to Discuss the Allegations and Consequences for Providing False or Manipulated Information

The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, conduct charges may result.

(3) *Parties' Review of and Response to Information Gathered as Part of Investigation*

At the conclusion of the investigation, the Investigator will assemble all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint, including information upon which the College does not intend to rely in reaching a determination regarding responsibility. The Investigator will redact information that is unrelated to the allegations of the Formal Complaint or otherwise not admissible in the Grievance Process (i.e., (a) because it is subject to an unwaived legally recognized privilege, (b) it relates to Complainant's sexual predisposition or (c) constitutes prior sexual history not offered to establish: (i) Consent or (ii) that Respondent did not engage in the alleged misconduct). The College will create a list describing information it has redacted or removed as irrelevant, inadmissible or not directly related to the allegations of the Formal Complaint, which it may allow the Parties to inspect.

The assembled information will then be shared with the Parties and their Advisors in hard copy or an electronic format with at least ten (10) Business Days to review and submit a written response. Depending on the nature of the information shared, the College may require Parties and their Advisors to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process.

The Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

(4) *Investigation Report*

After considering the Parties' responses and conducting any additional investigation indicated by those responses, the Investigator will prepare a report summarizing all of the relevant, admissible information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator will incorporate the Parties' responses to the report, as well as an explanation of any additional steps taken after receipt of Party responses, and include any related

materials. All of these written submissions and all relevant, admissible information gathered during the investigation will collectively be considered the investigation report.

To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

(5) *Parties' Review of and Response to Investigation Report*

The College will share the investigation report with the Parties and their Advisors either in hard copy or an electronic format, and each Party will have at least ten (10) days to review and respond to the investigation report in writing. Upon receipt of the Parties' responses after review of the investigation report and a determination by the Title IX Coordinator (in consultation with the Investigator) that the investigation is complete, the College will notify all Parties that the investigation is complete and provide information about next steps in the process.

**(J) Determination After Investigation**

(1) *Proceed to Live Hearing*

At the conclusion of the investigation, the Title IX Coordinator will review the investigation report to determine whether the conduct, if proved, falls within this Policy. When the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Live Hearing based on information contained in the investigation report. (*See* Section X(K)(1) below.)

(2) *Dismissal of Formal Complaint*

If the conduct, even if proved, does not fall within this Policy because it would not constitute Title IX Sex Discrimination, the conduct did not occur within the College's Education Program or Activity or did not occur within the United States, the College must dismiss the Formal Complaint. The College may also dismiss a Formal Complaint if the Title IX Coordinator determines: that there is not sufficient cause to believe the alleged conduct may have occurred; the Respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering sufficient evidence to reach a Determination of Responsibility or No Responsibility.

In either instance, the Title IX Coordinator will issue a Notice of Dismissal, including the reasons for the dismissal, to the Parties simultaneously within (2) two Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different College Policy, the Notice of Dismissal will include information about the referral and immediate next steps.

The Parties have a right to submit an Appeal from a dismissal of a Formal Complaint on the same grounds and using the same process described in Section IX(B)(b) above.

**(K) Live Hearings**

*(1) Notice of Live Hearing*

The Live Hearing process begins with the issuance of a Notice of Live Hearing. The Notice of Live Hearing will be sent to the Parties simultaneously within ten (10) Business Days of the delivery of conclusion of the Investigation and at least five (5) Business Days before the scheduled hearing date. The Notice of Live Hearing will include the following information:

- the date, time, and location of the Live Hearing;
- a brief factual summary of the conduct alleged to have violated the Policy, including date, time, and location;
- the specific Policy provision(s) at issue;
- possible sanctions associated with a finding of responsibility for the alleged Policy violation(s);
- the composition of the Hearing Board empaneled by the Title IX Coordinator;
- the Parties' right to be accompanied by an Advisor at the Live Hearing and the obligation to notify the Title IX Coordinator within (2) two days of receipt of the Notice of Live Hearing of: (1) the name, title, and contact information for their Advisors, (2) whether they will continue to be advised by the same Advisor as during the investigation (if applicable) or (3) that they do not intend to select an advisor;
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Grievance Process; and
- information regarding the Informal Resolution process (as applicable).

In addition, the Notice of Live Hearing will attach a copy of this Policy or include a web link to this Policy.

*(2) Title IX Coordinator as Hearing Board Chair*

Hearings are convened by the Title IX Coordinator. The Title IX Coordinator oversees all hearings. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to do so, the Title IX Coordinator will appoint a delegate to convene and oversee the Hearing Board process. The Title IX Coordinator will be the **non-voting** chair of all Hearing Boards during Live

Hearings, serving as a process and policy advisor to the Hearing Board. In this role, the Title IX Coordinator may be referred to as the Hearing Officer.

The Title IX Coordinator is never a Decision-maker, whether in connection with a Live Hearing or an Appeal, but may be an Investigator.

(3) *Hearing Board*

Prior to the Live Hearing, the Hearing Board will have read all of the information in the file. The Parties will have the same information as the Hearing Board.

(a) Gathering Information

The Hearing Board will focus its questions on those areas where it needs clarification or more information. The Hearing Board will not necessarily need or want Parties or Witnesses to repeat everything they shared during the investigation, but as the Decision-maker(s), the Hearing Board is obligated to come to its own Findings of Fact.

The Hearing Board has the right and responsibility to ask questions and elicit information from Parties and Witnesses on the Hearing Board's own initiative to aid the Hearing Board in obtaining relevant information, both inculpatory and exculpatory.

Only members of the Hearing Board may ask questions of any person testifying, except in connection with Cross-examination Questions asked by Advisors (*See* Section X(K)(9)). The Hearing Board is responsible for ensuring that it has sought and probed all information necessary to make an informed decision. At times, the Hearing Board will need to ask difficult or sensitive questions in order to understand the allegations, related information, and to gain a full understanding of the context.

If at any time a Party does not understand a question or why the Hearing Board is asking a question, the Party should let the Hearing Board know. The Hearing Board will explain and modify its question at its discretion.

The Parties have equal rights to present information in front of the Hearing Board, which ensures that the Hearing Board has the benefit of each Party's perspectives about the evidence.

Parties have no right to self-representation and may not ask questions directly of the other Party or Witnesses.

(b) Evaluating Information

The Hearing Board must objectively evaluate all admissible, relevant evidence for weight or Credibility, including both Inculpatory Evidence and Exculpatory Evidence. The Hearing Board

must focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. Determinations of Credibility must be based on objective evaluation of relevant evidence, not on a person's status as a Complainant, Respondent or Witness or inferences from Party or Witness status. Factors related to Credibility are set forth in the definition of Credibility. Credibility determinations are based on a number of factors, including demeanor (but *never* only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility.<sup>3</sup> The evaluation of Credibility also takes into account the normal fallibility of human memory.

A Party's answers to Cross-examination Questions will be evaluated by the Hearing Board in context, taking into account that a Party may experience stress while answering Cross-examination Questions. Parties will not be unfairly judged if they are unable to recount every specific detail in sequence, whether such inability is due to trauma, the effects of drugs or alcohol or simple fallibility of human memory. These factors will also be considered as part of the Credibility assessment.

(4) *Role and Obligations of Advisors During Hearings*

The Advisor's role and consequences for exceeding that role are set forth at Section X(E) above with the following important additions relevant to the Live Hearing:

- (a) Advisors may not speak during the hearing process, except in connection with Cross-examination Questions, described in Section X(K)(9). Therefore, in all instances other than Cross-examination Questions, Advisors may not speak to the Hearing Board, make statements or arguments, or answer questions on behalf of a Party.
- (b) Advisors conducting Cross-examination must be capable of understanding the purpose or scope of Cross-examination. Equal competency between the Parties' Advisors is not required.
- (c) When conducting Cross-examination, Advisors need not be advocates for Parties, but simply may be individuals who ask questions.

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<sup>3</sup> U.S. Equal Employment Opportunity Commission: Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>

- (d) Advisors cannot direct the Party how to answer a question. Parties should provide their own responses to questions, not the responses their Advisor believes would be best.

(5) *Location of the Live Hearing*

Live Hearings may be conducted with all Parties physically present in the same geographic location or, at the College's discretion, any or all Parties, Witnesses, and other participants may appear virtually at the Live Hearing, with the Parties being able to see and hear each other and Witnesses live.

At the request of either Party, the College will provide for the entire Live Hearing (including Cross-examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Unlike Parties, Witnesses do not have the right to demand to testify in a separate room, but the College, in its discretion, may permit any participant to appear remotely.

(6) *Scope of the Live Hearing*

The Live Hearing will relate solely to charges set forth in the Notice of Live Hearing received by the Parties. If the Parties or any Witnesses share information that goes beyond these charges, the Hearing Board will redirect the speaker to the charges at hand.

Parties may be accountable for additional violations discovered through the Grievance Process even if they do not appear in the Notice of Live Hearing. In this instance, a separate Grievance Process under this Policy or under other applicable policies will commence.

(7) *Attendance at the Hearing*

The Live Hearing is closed, meaning it is not open to the public. Witnesses may be present only for their individual meeting with the Hearing Board. Advisors and Parties may be present throughout the proceeding. If a Party, after having been given notice, does not appear at the Live Hearing, the Live Hearing will be conducted in their absence, and the Party's Advisor may appear and conduct Cross-examination. In the event neither a Party nor their Advisor appear at the hearing, the College will provide an Advisor to appear on behalf of the non-appearing Party.

(8) *Expectation of Honesty*

Parties and other individuals who offer information at a Live Hearing are expected to respond honestly and to the best of their knowledge. The Hearing Board reserves the right to recall any Party or Witness for further questions and to seek additional information as it deems necessary. A

Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

(9) *Cross-examination Questions and Effect of Failure to Submit to Cross-examination*

(a) *Advisors Conduct Cross-examination*

Advisors are allowed, on behalf of the Party they are advising, to cross-examine the other Party and Witnesses by asking relevant questions and follow-up questions, including questions challenging Credibility.

(b) *Relevance Determination Before Answering*

Before a Party or Witness answers a Cross-examination question, the Hearing Board must determine if the question is relevant. If a question is deemed irrelevant, the Hearing Board must explain why. The requirement of relevancy (see definition of Relevance at Section XVI) applies throughout the hearing, including during Cross-examination, and will be determined by the Hearing Board. Parties should understand that the process of Cross-examination may be difficult and may feel uncomfortable because its purpose is to promote the perspective of the other Party. Cross-examination Questions may not be submitted in writing in advance of the Live Hearing or during the Live Hearing for purposes of seeking an evaluation of Relevance.

(c) *Effect of Not Submitting to Cross-examination*

If a Party or Witness does not submit to Cross-examination by Advisors at the Live Hearing, the Hearing Board must not rely on any Statement of that Party or Witness in reaching a determination regarding responsibility. This rule does not apply if a Party or Witness refuses to answer questions posed by the Hearing Board.

- i. “Submit to Cross-examination” means answering those Cross-examination Questions that are relevant, as determined by the Hearing Board in real time during the Live Hearing. If a Party or Witness disagrees with the Hearing Board’s Relevance determination, they may either (a) abide by the Hearing Board’s determination and answer the question or (b) refuse to answer the question. In the event the Party or Witness refuses to answer the question, unless the Hearing Board reconsiders the Relevance determination, the Hearing Board cannot rely on any Statement of that Party or Witness.
- ii. “Statement” has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person's intent to

make factual assertions, or to the extent that such evidence does not contain a person's Statements. Thus, police reports, SANE reports, medical reports, and other documents and records may not be relied on in making a final Determination after the completion of the hearing to the extent that they contain the Statements of a Party or Witness who has not submitted to Cross-examination. Documentary evidence such as police reports or hospital records may have been gathered during investigation and, if directly related to the allegations inspected and reviewed by the Parties, and to the extent they are relevant, summarized in the investigation report, the hearing is the Parties' first opportunity to argue to the Decision-maker about the Credibility and implications of such evidence. Probing the Credibility and reliability of Statements asserted by Witnesses contained in such evidence requires the Parties to have the opportunity to cross-examine the Witnesses making the Statements.

iii. Examples

- This rule applies to law enforcement reports, SANE reports, medical reports, and any other documents and records that contain the Statements of a Party or Witness who has not submitted to Cross-examination.
- If one Party to a text message or email exchange submits to Cross-examination and the other does not, only the messages of the individual who submits to Cross-examination may be considered.
- Where a Party refuses to answer Cross-examination Questions, but video evidence exists showing the underlying incident, the Hearing Board may still consider the available evidence and make a determination.
- If the matter does not depend upon a Party's or Witness's Statements, but on other evidence (e.g., video evidence that does not consist of "Statements" or to the extent the video contains non-Statement evidence), the Hearing Board can still consider this other evidence and reach a determination, but without drawing any inference based upon lack of Party or Witness testimony.

(10) *Breaks*

The Hearing Board may need to take breaks during testimony to ensure that it can confer regarding the information that has been offered and can determine whether further questions are necessary. The Hearing Board will take as few breaks as possible, but breaks are needed and help to avoid having to call individuals back to meet with the Hearing Board at a later date. At any time, a Party may request a break to talk with their Advisor or for another reason. In almost all instances, a break will be allowed.

(11) *Rape Shield Protections*

All questions and evidence about Complainant's sexual predisposition or prior sexual behavior are irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove Consent.

(12) *Order of the Live Hearing*

- (a) The Chair will call the Live Hearing to order and will explain the hearing process, which will include a reading of the charge(s) at issue and will provide an opportunity for all Parties to ask procedural questions prior to opening statements.
- (b) The Parties shall be informed that the hearing is being recorded. The recording is the sole official verbatim record of the Live Hearing and is the property of the College.
- (c) The Complainant may present an opening statement related to the charges.
- (d) The Respondent may present an opening statement related to the charges.
- (e) The Hearing Board will ask the Complainant questions relevant to the charges.
- (f) The Respondent's Advisor may ask Complainant relevant questions and follow-up questions, including those challenging Credibility (Cross-examination Questions).
- (g) The Hearing Board will ask the Respondent questions relevant to the charges.
- (h) The Complainant's Advisor may ask Respondent relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).

- (i) The Hearing Board may call Witnesses to provide relevant information to the Hearing Board.
- (j) At the conclusion of each Witness, Complainant and Respondent's Advisors may ask each Witness relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions). The Parties may never ask questions directly of the Witnesses.
- (k) First, Complainant's Advisor will ask questions of each Witness and then Respondent's Advisor will ask questions of each Witness. Complainant's Advisor will then have one more opportunity to ask questions of each Witness and Respondent's Advisor will have one more opportunity to ask questions of each Witness.
- (l) Before a Witness answers a Cross-examination Question from an Advisor, the Hearing Board must first determine whether the question is relevant.
- (m) At the conclusion of the testimony of the Parties and the Witnesses, the Parties will be able to make a closing statement, with the Complainant going first and the Respondent going next.
- (n) The Chair announces that the Live Hearing is concluded.

(13) *Hearing Board Deliberations and Written Determination*

- (a) Deliberations

When the Live hearing concludes, the Hearing Board will privately deliberate and make its decision in accordance with the preponderance of the evidence Standard of Evidence.

- (b) Delivery and Contents of Written Determination

The Hearing Board will issue a Written Determination, which will be sent to the Parties simultaneously within fourteen (14) Business Days of the conclusion of the Live Hearing, which will include:

- i. Procedural History
- ii. Summary of allegations in Notice of Live Hearing
- iii. Policy provisions at issue

- iv. Findings of Fact related to each allegation potentially constituting Title IX Sex Discrimination, made by the applicable standard of evidence
  - v. Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which should include an evaluation of the weight or Credibility of admissible, relevant evidence
  - vi. A determination of whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility)
  - vii. Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility
  - viii. A statement of any disciplinary sanctions imposed on the Respondent and the rationale for the sanctions
  - ix. Whether Remedies will be provided to the Complainant, using the phrase: “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 include no contact orders, the opportunity to retake a course or provide additional off-campus counseling with a professional.
    - i. The nature of such Remedies will not appear in the Written Determination
    - ii. Remedies that do not directly affect the Respondent must not be disclosed to the Respondent
- (c) Information about how to file an Appeal and how to access the electronic recording before the time to file an Appeal lapses.

*(14) Implementation of Remedies in Written Determination*

The Title IX Coordinator is responsible for the effective implementation of Remedies.

**(L) Sanctions**

*(1) Possible Sanctions*

The following sanctions and/or conditions may be imposed following a Determination of Responsibility for a violation of this Policy. Title IX requires that the College provide notice of a range of sanctions; the list below is intended as notice of possible Remedies and disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

(a) Students

- Expulsion (permanent separation)
- Suspension
- Deferred Suspension
- Disciplinary Probation
- Disciplinary Probation with deferred removal from the residence halls
- Loss of housing contract
- Residence hall probation
- Conduct warning
- Title IX Sex Discrimination education or other relevant education
- Parent or guardian notification (subject to privacy restrictions)
- Financial restitution
- Organizational sanctions including probation and rescinding recognition or other organizational restrictions
- Fine
- Community restoration and/or community service
- Loss of campus privileges
- Loss of campus employment and/or opportunities for campus employment
- Withholding records or degree
- Revocation of admission and/or degree

- Bar against registration
- Discretionary action
- Substance abuse education and/or evaluation

(b) Employees

- Termination of employment
- Suspension
- Demotion
- Progressive discipline
- Warning
- Loss of pay or other pay adjustments
- Job transfer
- Change or restrictions in work location and/or job responsibilities
- Title IX Sex Discrimination education
- Restrictions on the Employee's communications
- Limitations on the Employee's movement in or on the College's campus, programs, and activities

(2) *Factors in Determining Sanctions*

In considering the appropriate sanction within the recommended outcomes, the Hearing Board may consider the following factors:

- Respondent's prior discipline history;
- how the College has sanctioned similar incidents in the past;
- the nature of the conduct at issue, including whether there was violence or other use of force;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the College's community, its members or College property;
- whether the Respondent accepted responsibility;

- whether the Respondent is reasonably likely to engage in the conduct in the future;
- any other mitigating or aggravating circumstances, including the College's values; and
- the College's obligation to eliminate Prohibited Conduct, prevent its recurrence, remedy its effects, and to maintain an environment free from Title IX Sex Discrimination.

Respondent's lack of comprehension that conduct constituting Title IX Sex Discrimination violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in the College's discretion, factor into the sanction decision.

*(3) Remedial Action*

The Hearing Board may consider other remedial actions that may be taken to address and resolve any incident of Title IX Sex Discrimination and to prevent its recurrence, including: strategies to protect the Complainant and any Witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any Witnesses, and the broader campus community, and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

*(4) Failure to Comply with Sanctions*

Failure to comply with the sanctions or conditions imposed by the Hearing Board will result in action under the College's student code of conduct, Faculty or Employee Handbooks, as applicable.

**(M) Effective Date of the Written Determination and Possible Notice to Parents**

The Written Determination becomes final only after the time period to file an Appeal has expired (See Section XI(E) below) or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed.

The College reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary sanctions.

**XI. APPEALS**

**(A) Filing an Appeal from a Written Determination**

The Parties have equal rights to file an Appeal. Appeals must be submitted to the individual identified in the Written Determination on or before the date specified in the Written

Determination, which shall be seven (7) Business Days after the delivery of the Written Determination.

**(B) Appeal Grounds**

An Appeal is not intended to be a rehearing of the information presented at the Live Hearing. An Appeal may only be based upon one or more of the following grounds:

1. Procedural Irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or,
3. 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.

**(C) Actions upon Receipt of Appeal**

1. When the Title IX Coordinator receives an Appeal, Title IX Coordinator will provide the request to the Appeal Decision-maker.

2. Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant will be given notice of the receipt of the Appeal, which will also serve as notice to the non-appealing Party of the Appeal, and notice to the Parties of the Appeal Decision-maker.

3. The Parties will have two (2) days after notice of receipt of the Appeal to request that the Title IX Coordinator remove the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. The Title IX Coordinator will determine whether to remove the Appeal Decision-maker member. If the Appeal Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If the Appeal Decision-maker is removed and replaced, the Parties will be sent simultaneous written notification of the name of the new Appeal Decision-maker.

4. When the time to request removal of the Appeal Decision-maker has run, the Appeal Decision-maker will be provided with the entire file provided to the Hearing Board, together with the Written Determination.

5. The Appeal Decision-maker will first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal Grounds set forth above has been properly alleged by the Appellant. Within seven (7) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties simultaneously:

(a) That the Appeal has been rejected due to insufficient grounds, with the Appeal Decision-maker's rationale, or

(b) That the Appeal has been accepted.

6. The non-appealing Party/ies will be entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Business Days of receipt of notice that the Appeal was accepted.

7. The Appeal Decision-maker will then analyze all of the materials related to the Appeal and will take one of the following actions:

(a) Uphold the original decision

(b) Send the matter back to the Hearing Board for further consideration

(c) Refer the matter to the Title IX Coordinator for further investigation or a new hearing with a new Hearing Board

8. The written Appeal decision, which will include the Appeal Decision-maker's rationale, will be sent to the Parties simultaneously.

9. The Appeal Decision-maker will issue its written decision on Appeal within fourteen (14) Business Days of the notice to the Parties that the Appeal was accepted (step 5 (b) above).

#### **(D) Appeal Decisions are Final**

A decision denying the entitlement to an Appeal and all decisions made by the Appeal Decision-maker are final.

#### **(E) When an Appeal is not Filed**

The Parties will be notified if the time to file an Appeal has expired without any Appeal having been submitted.

## **XII. TRANSCRIPT NOTATIONS**

New York law requires the College to make specific notations on the transcripts of Respondents found responsible for the following conduct prohibited by this Policy: Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

- Students suspended after a finding of responsibility will receive the following notation on their transcript: “suspended after a finding of responsibility for a code of conduct violation.” Such notations will remain for at least one year after the conclusion of the suspension, at which point a suspended student can seek removal of the notation by appealing to the Title IX Administrator. Students seeking removal of the notation should contact the Title IX Coordinator for Appeal procedures.
- Students expelled after a finding of responsibility will receive the following notation on their transcript: “expelled after a finding of responsibility for a code of conduct violation.” Such notation shall not be eligible for removal.
- Students who withdraw pending resolution of alleged violations of this Policy will receive the following notation on their transcript: “withdrew with conduct charges pending.” Such notation shall not be eligible for removal unless the charges are later resolved.
- If the College vacates a finding of responsibility for any reason, any such transcript notation shall be removed.

### **XIII. GRIEVANCE PROCESS TIMEFRAMES**

The College strives to meet the following timeframes for the Grievance Process. All days are measured in Business Days with the Grievance Process commencing as of date of acceptance of a signed Formal Complaint.

**(A) Notice of Investigation:** Within five (5) Business Days of acceptance of signed Formal Complaint.

**(B) Investigation:** The investigation process will typically be completed within sixty (60) Business Days of issuance of the Notice of Investigation.

**(C) Opportunity to Review/Respond to Information Gathered During Investigation and Directly Related to Allegations of the Formal Complaint:** The information gathered during investigation and directly related to the allegations of the Formal Complaint will be provided to the parties in hard copy or electronic format within sixty-five (65) Business Days of issuance of the Notice of Investigation. Parties and their Advisors have ten (10) days to review and respond.

**(D) Opportunity to Review/Respond to Investigation Report:** Parties and their Advisors have ten (10) Business Days from the delivery of the Investigation Report to review and respond to the Investigation Report.

**(E) Notice of Live Hearing:** As applicable, a Notice of Live Hearing will be sent the Parties simultaneously within ten (10) Business Days of the conclusion of the investigation, which occurs after receipt of the Parties' response to the Investigation Report and when the College determines no further investigation is warranted.

**(F) Challenge to Hearing Board Member:** Within two (2) Business Days of receipt of the Notice of Live Hearing, Parties have the right to make a written request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

**(G) Live Hearing:** The Live Hearing will begin no sooner than fourteen (14) Business Days and no more than twenty-one (21) Business Days of issuance of the Notice of Live Hearing.

**(H) Written Determination following a Live Hearing:** Following a Live Hearing, the Written Determination will be sent to the Parties simultaneously within fourteen (14) Business Days of the conclusion of the Live Hearing. A Live Hearing is not concluded until Hearing Board deliberations have ended.

**(I) Appeals:**

1. Parties must file an Appeal within seven (7) Business Days of receipt of the Written Determination.

2. Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant and non-appealing Party/ies will receive written notice that an Appeal has been submitted and the identity of the Appeal Decision-maker.

3. The Parties will have two (2) days after notice of receipt of the Appeal to request that the Title IX Coordinator remove a member of the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

4. Within seven (7) Business Days of the receipt of the Appeal, the Appeal Decision-maker will send written notice to the Parties either accepting or rejecting the Appeal.

5. The Appeal Decision-maker will issue its written decision on the Appeal within fourteen (14) Business Days of the notice to the Parties that the Appeal was accepted.

#### **XIV. RECORDKEEPING**

The College will maintain the records identified in this section of this Policy for a period of seven (7) years. The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained in paper or digital files.

In connection with each Report and each Formal Complaint, the College will maintain the following records, to the extent they exist:

1. documentation of any Report of alleged Title IX Sex Discrimination;
2. documentation of any Supportive Measures or if no Supportive Measures are provided, the reasons why and an explanation of how the College's response was not clearly unreasonable;
3. the Formal Complaint;
4. Notice of Dismissal of Formal Complaint and any associated documents;
5. documentary evidence gathered in the course of an investigation and photographs or descriptions of non-documentary evidence gathered in the course of an investigation;
6. written responses of the parties provided prior the finalization of the Investigation Report;
7. the Investigation Report;
8. the audio recording, audiovisual recording, or transcript of any Live Hearing;
9. the Written Determination;
10. any Appeal and Written Appeal Decision;
11. records of the sanctions and/or remedies;
12. records of any other steps taken to restore or preserve equal access to the College's Education Program or Activity,
13. any written agreement of an Informal Resolution; and
14. a statement documenting the basis for the College's conclusion that its response to a report or formal complaint was not deliberately indifferent.

The College shall also maintain all materials used to train its Title IX Coordinators, Investigators, Decision-makers, and Facilitators and a copy of each version of its Title IX Policy on Sex Discrimination.

## **XV. MODIFICATIONS TO THIS POLICY**

This Policy may be modified from time-to-time, during an academic year or otherwise, in the College's discretion and as may be required by law. The College Employees and Students will be notified whenever this Policy is modified.

## **XVI. GLOSSARY OF DEFINED TERMS**

- **Advisor:** A person selected by a Complainant or Respondent to assist them during the Grievance Process; or appointed by the College to support Complainant or Respondent pursuant to this Policy.
- **Administrative Leave:** Temporary separation from a person's job, with or without pay and benefits intact, as determined by the College and any relevant obligations binding The College.
- **Appeal:** An objective review of the prior process (including Dismissal of a Formal Complaint) and outcome, unless new evidence must be considered.
- **Appeal Decision-maker:** An individual or a group of people that makes decisions when Parties submit an Appeal. An Appeal Decision-maker cannot be the Investigator, the Title IX Coordinator or members of the Hearing Board.
- **Appellant:** A person who files an Appeal.
- **Business Days:** Any day, excluding Saturday, Sunday, and federal and state holidays.
- **Campus Official:** An Employee of the College who has authority to institute corrective measures on behalf of the College.
- **Complainant:** An individual who is alleged to have been the target of conduct that could constitute Title IX Sex Discrimination under this Policy, whether or not the individual has filed a Formal Complaint.
- **Consent:** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Consent is withdrawn or can no longer be given, sexual activity must stop.

This definition is required by New York State Education Law Article 129B.

- **Credibility:** The worthiness of belief of information shared by a Party or a Witness.
- **Cross-examination Questions:** Relevant questions and follow-up questions, including questions challenging Credibility. Cross-examination Questions are intended to give both Parties equal opportunity to meaningfully challenge the plausibility, reliability, Credibility, and consistency of the information provided by the other Party and Witnesses so that the outcome of each individual case is more likely to be factually accurate.
- **Dating Violence:** Violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and, (b) where the existence of such a relationship shall be determined by (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Title IX requires that the College use this definition, from 34 U.S.C. 12291(a)(10).
- **Decision-maker:** A person or persons designated to conduct Live Hearings, to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals.

Decision-makers may or may not be Employees of the College. Decision-makers are trained on the definition of Title IX Sex Discrimination, the scope of the College's program or activity, the Grievance Process, Relevance, the technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially.

- **Determination of Responsibility or No Responsibility:** A determination by the Hearing Board regarding whether or not the Respondent violated this Policy.
- **Domestic Violence:** 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 spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state, 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 the state. Title IX requires that the College use this definition, from 34 U.S.C. 12291(a)(8). This definition does not apply to roommates who have not expressed interest in entering into, or who have not entered into, a dating or sexual relationship. Under the Clery Act and the Campus SaVE Act, the College will record and report all relevant incidents of domestic violence.
- **Education Program or Activity:** Locations, events or circumstances over which the College exercised substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sex Discrimination occurred. Education program or Activity includes any building owned or controlled by the College and/or by a student organization that is officially recognized by the College.
- **Emergency Removal:** A decision to remove a Respondent after an individualized analysis concluding that there is an immediate threat to the physical health or safety of any student or other individual arising from allegations of Title IX Sex Discrimination. Respondents can request review of an Emergency Removal.
- **Employee:** Faculty, staff, administrator, and any other individual employed by the College in any capacity or role, except an Employee does not include a College Employee who is also enrolled as a full-time student of the College.
- **Exculpatory Evidence:** Evidence that shows or suggests that a Respondent did not engage in the alleged Title IX Sex Discrimination.
- **Expulsion:** Permanent dismissal from the College and restriction from College property. This status constitutes a disciplinary record and this sanction will be noted on the student's transcript.

- **Facilitator:** A person or persons designated to facilitate an Informal Resolution of a Formal Complaint. Facilitators may or may not be Employees of the College. Facilitators are trained on the definition of Title IX Sex Discrimination, the scope of the College’s program or activity, how to conduct an Informal Resolution process, and how to serve impartially.
- **Formal Complaint:** A document signed by a Complainant or a Title IX Coordinator alleging Title IX Sex Discrimination against a Respondent(s) and requesting that the allegation(s) be investigated.
- **Findings of Fact:** A Hearing Board’s decision regarding what occurred.
- **Grievance Process:** The process for investigating and resolving a Formal Complaint.
- **Hearing Board:** A single Decision-maker or group of Decision-makers who conduct the Live Hearing. Regardless of a Hearing Board’s composition, the Decision-makers will be referred to as the Hearing Board. The Hearing Board cannot be the same person(s) as the Title IX Coordinator or the Investigator.
- **Inculpatory Evidence:** Evidence that shows or suggests that a Respondent engaged in the alleged Title IX Sex Discrimination.
- **Informal Resolution:** A voluntary process that allows the Parties and the College to engage in discussions in an attempt to come to an agreement to resolve a Formal Complaint that does not involve a full investigation and/or hearing and adjudication. This process is not available when a Formal Complaint alleges that an Employee has engaged in Title IX Sex Discrimination toward a student.
- **Investigator:** A person or persons, internal or external to the College, designated by The College to investigate the allegations of a Formal Complaint. An Investigator may also be the Title IX Coordinator, but may not be a member of the Hearing Board or the Appeal Decision-maker. Investigators are trained on the definition of Title IX Sex Discrimination, the scope of the College’s program or activity, the Grievance Process, Relevance, how to conduct an investigation, how to create an investigation report, and how to serve impartially.
- **Live Hearing:** A hearing where all Parties can see and hear each other in real time, whether in the same location or connected via technology.
- **Notice of Dismissal:** written notice of the Title IX Coordinator’s decision to dismiss a Formal Complaint, including the basis of the decision. A Party may submit an Appeal of a dismissal of a Formal Complaint.

- **Notice of Informal Resolution:** As applicable, a Notice of Informal Resolution will be sent to the Parties simultaneously following receipt of each Party’s completed Consent to Informal Resolution form.
- **Notice of Investigation:** A written notice to the Parties commencing the Grievance Process.
- **Notice of Live Hearing:** The letter sent to the Parties detailing and providing notice of the allegations falling within the scope of this Policy that will proceed to a Live Hearing.
- **Party or Parties:** Individuals who are Complainants and Respondents in a Grievance Process. When referencing the Complainant, the Respondent may be referred to as the “other Party” and when referencing the Respondent, the Complainant may be referred to as the “other Party.”
- **Procedural History:** A section of the Written Determination describing the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties; the date Respondent received the Notice of Investigation; the investigation process; and hearings held.
  - Regarding the description of the investigation process, the Procedural History section should include: which Parties and Witnesses were interviewed and when; site visits; methods used to gather evidence; what type of evidence was reviewed; and the process undertaken to inspect and review the evidence and to disseminate the investigation report, including timelines. The Written Determination should include any actual or perceived procedural issues. For example, if a process was delayed for good cause, that delay should be explained in the Written Determination. Likewise, if the Parties requested that the Investigator follow certain “leads” that the Investigator was not reasonably able to pursue based on a lack of time, resources, or the unavailability of Witnesses, that should be addressed in the timeline.
- **Procedural Irregularity:** A failure to follow the College’s own procedures.
- **Prohibited Conduct:** Five types of Title IX Sex Discrimination that violate Title IX and this Policy: (1) Title IX Sexual Harassment; (2) Sexual Assault; (3) Dating Violence; (4) Domestic Violence; and (5) Stalking.
- **Quid Pro Quo:** a conditioning the provision of an aid, benefit, or service on an individual’s participation in an unwelcome sexual contact.

- **Rape Shield Protections:** Protects Complainants from questions about or submission of evidence regarding the Complainant's sexual predisposition or, except in very limited circumstances, Complainant's prior sexual behavior.
- **Relevance:** Information that is relevant directly relates to the allegations in dispute, and, therefore, is probative of a material fact concerning the allegations. Information that is not relevant includes: information protected by a legally recognized privilege; evidence about a Complainant's prior sexual predisposition; evidence about a Complainant's prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or offered to prove Consent, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent); any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; Party or Witness Statements that have not been subjected to Cross-examination at a Live Hearing; and evidence duplicative of other evidence.
- **Remedies:** Measures taken by the College following a Determination of Responsibility on the part of Respondent designed to restore or preserve equal access to the College's Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent; such Remedies are referred to as Sanctions.
- **Report:** The submission of information to the Title IX Coordinator or a Campus Official regarding a potential violation of this Policy. A Report is not a Formal Complaint and, therefore, does not trigger the Grievance Process.
- **Respondent:** Any individual who has been alleged to have engaged in conduct that could violate this Policy.
- **Retaliation:** Intimidation, threats, coercion or discrimination, including charges against an individual for code of conduct violations that do not involve Title IX Sex Discrimination, but arise out of the same facts or circumstances as a Report or Formal Complaint of Title IX Sex Discrimination, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- **Sanctions:** Disciplinary or punitive measures imposed on a Respondent by the College following a Determination of Responsibility on the part of Respondent.
- **Sexual harassment:** a form of sexual discrimination and is unlawful under federal, state and where applicable local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, gender identity and the status of being transgender.

- **Sexual Assault:** Any conduct that would constitute a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual Assault includes the following Prohibited Conduct:
  1. **Rape** (Except Statutory Rape) - the carnal knowledge of a person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity. “Carnal knowledge” means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.
  2. **Sodomy** - oral or anal sexual intercourse with another person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  3. **Sexual Assault with An Object** - to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  4. **Fondling** - touching of the private body parts of another person for the purpose of sexual gratification without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  5. **Incest** - nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  6. **Statutory Rape** - nonforcible sexual intercourse with a person who is under the statutory age of consent.

Title IX requires that the College use this definition, from 20 U.S.C. 1092 (f)(6)(A)(v).

- **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for their safety or the safety of others; or (b) suffer emotional distress. Title IX requires that the College use this definition, from 34 U.S.C. 12291(a)(30).

- **Standard of Evidence:** The Standard of Evidence reflects the degree of confidence that a Decision-maker has in the correctness of the factual conclusions reach. The College will apply the preponderance of evidence Standard of Evidence to matters falling under the Policy.
- **Statement:** Evidence that constitutes a person’s intent to make factual assertions.
- **Supportive Measures:** Non-disciplinary and non-punitive services that are offered, without fee or charge, by the College on an individualized basis to a Complainant or Respondent that are designed to restore or preserve equal access to the College’s Education Program or Activity without unreasonably burdening the other Party.
- **Suspension:** Termination of course registration from the College after a specific date and for a specified time. The suspension may be for the semester during which the violation occurred and/or for a subsequent semester. A student who is suspended for the current semester will be withdrawn from all courses and receive a W grade depending on the date of suspension.
- **Title IX Coordinator:** The person or persons designated by the College as a Title IX Coordinator, including any persons designated as an “acting,” “deputy” or “interim” Title IX Coordinator. In the event that special circumstances require the Title IX Coordinator to delegate responsibilities, the term also includes the Title IX Coordinator’s delegate.
- **Title IX Sex Discrimination or Discrimination:** Discrimination on the basis of sex prohibited by Title IX (20 USC 1681, *et seq.*), Title 34 CFR Part 106, and this Policy in the form of (1) Title IX Sexual Harassment; (2) Sexual Assault; (3) Dating Violence; (4) Domestic Violence; and (5) Stalking. *See* also Prohibited Conduct.
- **Title IX Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:
  1. An Employee or Student 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
  2. 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.
- **Witness:** A person who has seen, heard or otherwise has knowledge or information relevant to an alleged violation of this Policy, but not including the Investigator. The Investigator and Hearing Board meet with Witnesses at their request and at the suggestion of the Parties.

- **Written Determination:** A letter delivered simultaneously to the Parties that describes the Hearing Board's decision regarding responsibility, which must be supported by evidence.