

Sexual Harassment (Title IX) Operating Procedure

I. Introduction

Portland Community College (the “College”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sex or gender-based harassment. To ensure compliance with federal laws and regulations, including Title IX of the Education Amendments of 1972, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sex or gender-based harassment.

The College is committed to providing victims of sex or gender-based harassment with supportive measures throughout this process, which includes providing interpretation, translation services or other accessibility resources in making a formal report. For more information about these services, please contact the Title IX Coordinator.

Sexual harassment is defined under both federal and state law. This policy applies to conduct that falls within the federal definition of sex or gender-based harassment under Title IX. When an incident of sex or gender-based harassment does not fall within this policy, the College will process the report in alignment with the Sexual Harassment (Non-Title IX) Operating Procedure, Non-Discrimination or Non-Harassment Operating Procedure, Retaliation Operating Procedure, or any other applicable College policy or operating procedure. The steps outlined in this procedure are required by federal law. Resources at the College are available to explain and provide support to students, employees, and others throughout this process. In implementing the procedure discussed below, the College will also provide supportive measures, training, and resources in compliance with state law, unless they are preempted by the Title IX regulations.

This Title IX sexual harassment policy applies to students, employees, applicants for employment, and applicants for admission, or any other individual.

The College reserves the right to modify this operating procedure as determined by the College, and in accordance with legal requirements.

II. Title IX Coordinator

Questions concerning Title IX may be referred to the College Title IX Coordinator whose contact information is:

Charisse Loughery

SY CC 209A

titleix@pcc.edu

The Title IX Coordinator is required to respond to reports of sexual harassment. The Title IX Coordinator will handle information received with discretion and will share information with others on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with state and federal legal requirements, or share information to implement supportive measures. Duties assigned to the Title IX Coordinator can also be assigned to the Title IX Coordinator's designee.

A report of sexual harassment to the Title IX Coordinator does not necessarily lead to a full investigation, as discussed more fully below. As determined by the Title IX Coordinator, the College reserves the right to initiate an investigation of any conduct prohibited by this procedure without a formal complaint from or participation by the reporting party.

III. Definitions

- **Advisor:** An "advisor" is a person chosen by a party or appointed by the College to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. Throughout this procedure, both the reporting party and respondent have a right to an advisor of their choice. If a party does not have an advisor at the time of the hearing, the College must provide the party an advisor of the College's choice, free of charge. The College may establish restrictions regarding the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties.
- **Complainant:** For the purposes of this procedure, the College refers to a "Complainant" as the "reporting party." The reporting party (or "Complainant") is an individual who is reported to be the victim of conduct that could constitute sexual harassment.
- **Consent:** Consent means an affirmative, conscious, and voluntary agreement to engage in sexual activity. Consent is not affirmative, conscious, and voluntary if it is achieved by force, coercion, or if the individual is incapacitated and incapable of giving consent.
- **Day:** Means a day which falls from Monday through Friday and excludes holidays and other days when the College is closed; a business day.
- **Decision-maker:** The individual(s) who will oversee the live hearing and make a determination of responsibility. The College may have one decision-maker determine whether the respondent is responsible for a violation of this procedure and another

decision-maker determine the appropriate level of penalty for the conduct. The decision-maker cannot be the Title IX Coordinator or the investigator.

- **Formal Complaint:** A written complaint signed by the reporting party or Title IX Coordinator, alleging sexual harassment, and requesting an investigation. If the Title IX Coordinator signs the formal complaint, the Title IX Coordinator will not become a party to the complaint.
- **Party/Parties:** As used in this procedure, this means the reporting party and respondent.
- **Reasonable Person:** An objective standard referring to a hypothetical reasonable person with a reasonable way of interpreting and reacting to a situation, as a reasonable person under similar circumstances and with similar identities to the individual.
- **Respondent:** A respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Responsible Employee:** College employees who have a duty to report incidents of sexual harassment. College responsible employees are defined below in Section IX. Responsible employees are obligated to report student disclosures to the College if they receive information about conduct prohibited by this procedure.
- **Student:** Any person who is registered for one or more credit or non-credit hour(s), including online learning courses, or who has applied for admission, received financial aid, or received any other service or benefit provided by the College which requires student status. Any person who has withdrawn or who is not enrolled in any courses, but who has a continuing relationship with the College, may be considered a “student” for the purposes of this procedure.

IV. Sexual Harassment Under Title IX

Sexual harassment under Title IX includes any conduct on the basis of sex or gender that satisfies one or more of the following:

- A College employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (*quid pro quo* harassment);
- 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;

- Title IX Sexual Assault. An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including the following:
 - **Sex Offenses.** Any sexual act directed against another person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent.
 - **Rape** (except Statutory Rape). Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the reporting party.
 - **Sodomy.** Oral or anal sexual intercourse with another person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of the reporting party's age or because of the reporting party's temporary or permanent mental or physical incapacity.
 - **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of the reporting party's age or because of the reporting party's temporary or permanent mental or physical incapacity.
 - **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of the reporting party's age or because of the reporting party's temporary or permanent mental or physical incapacity.
 - **Sex Offenses, Non-Forcible. Non-Forcible Sexual Intercourse.**
 - **Incest.** Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **Statutory Rape.** Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- **Title IX Dating Violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Title IX domestic violence.
- **Title IX Domestic Violence.** An act of violence committed by:
 - A current or former spouse or intimate partner of the reporting party;
 - A person with whom the reporting party shares a child in common;
 - A person who is cohabitating with or has cohabitated with the reporting party as a spouse or intimate partner;
 - A person similarly situated to a spouse of the reporting party under applicable law; or
 - Any other person against an adult or youth reporting party protected from that person's acts under applicable domestic or family violence laws.
- **Title IX Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the reporting party's safety or the safety of others; or
 - Suffer substantial emotional distress.
 - For the purposes of this definition:
 - Course of conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils,

threatens, or communicates to or about a person, or interferes with a person's property.

- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

V. Jurisdictional Requirements—Application of Procedures

These procedures apply if the conduct meets the following three jurisdictional requirements:

- The conduct took place in the United States;
- The conduct took place in a College “education program or activity” (This includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the harassment occurred, including on-campus and off-campus property and buildings that the College owns or controls, or student organizations officially recognized by the College); and
- The conduct meets the definition of Title IX “sexual harassment.”

If the Title IX Coordinator determines that the reported conduct does not fall within this procedure, the College will determine if the conduct violates another applicable College operating procedure.

In addition to College policies and operating procedures, if the respondent is not a PCC student, the Title IX Coordinator can help refer the reporting party to the Title IX office for the appropriate institution, and/or connect the reporting party with the appropriate law enforcement agency.

Regardless of whether the complaint falls within this policy or other College procedures, the reporting party and respondent may still access the supportive measures discussed below in Section X. B.

VI. Confidentiality and Confidential Resources

The College is committed to maintaining confidentiality and privacy throughout the process described in this procedure and will not share information except as required by law, to address safety issues, or to carry out the processes required by this procedure or other applicable College procedures.

When a reporting party shares information with College officials or employees, the level of confidentiality that can be provided by a College official or employee depends on (a) whether the individual has been designated a confidential employee, and (b) whether there are any exceptions to that individual's ability to maintain confidentiality, under either College policies and procedures, federal, state, or local law.

Confidential Resources are available to students and employees to provide support, resources, and information. Confidential Resources do not share identifying information about people or incidents without the individual's consent, unless otherwise required by law.

A. Confidential Resources for Students

Certain College employees are designated as Confidential Resources. Confidential Resources are regularly trained and adhere to specific requirements, imposed by either the College, professional associations, the Identity-Based Resource Centers, or the nature of the position.

Directors and staff members of the Outreach and Advocacy Project, the College's Counseling Services, and the College's Identity-Based Resource Centers (including the Women's Resource Center, Queer Resource Center, Multicultural Resource Center, Veteran's Resource Center, and DREAMers Resource Center) are designated Confidential Resources for students only when the director and/or staff member are working in their designated positions, Center, or providing services as detailed above.

B. Confidential Resources for Employees

Confidential Resources for employees include the Employee Assistance Program ("EAP") and referrals to external counseling services.

VII. Reporting Options

Any individual may report sexual harassment to the College's Title IX Coordinator, either in-person, by phone at 971-722-7511, at titleix@pcc.edu, or by submitting a form at <https://www.pcc.edu/incident/>. College employees may also report sexual harassment to the office responsible for human resources. College students may report sexual harassment to the Title IX Coordinator or any designated College responsible employee.

The College strongly encourages prompt reporting of sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including physical evidence, digital media, and witness statements. A delay may limit the College's ability to effectively investigate and respond.

Individuals can decide whether they want to pursue a formal Title IX complaint. Reporting sexual harassment to the Title IX Coordinator does not automatically initiate an investigation under these procedures. A report allows the College to provide a wide variety of support and resources to impacted individuals and to prevent the reoccurrence of the conduct. A reporting party or the Title IX Coordinator filing a formal complaint will initiate an investigation. Informal resolution of complaints is also an option described below.

The College recognizes not every individual harmed by sexual harassment will want to or is prepared to make a formal complaint to the College or law enforcement. Individuals seeking to talk to someone about an incident of sex or gender-based harassment in a confidential manner without making a report to the College or initiating any investigation or action by the College or the police can access the confidential resources as outlined and described above in Section VI. Confidentiality and Confidential Resources.

If there are parallel criminal and Title IX investigations, the College will cooperate with the external law enforcement agency and will coordinate to help ensure that the Title IX process does not hinder legal process or proceedings. The College's process will not be determined based on the outcome of any criminal investigation.

The College will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the College does not document personal information; the College reports the type of conduct, and the time, date, and location.

VIII. Amnesty

The College encourages all community members to report behavior associated with sexual harassment. To support such reporting, the College will not pursue disciplinary proceedings or sanctions for violations of the College's operating procedures related to drug or alcohol use, trespassing or unauthorized entry of College facilities or other violations of College procedure or applicable codes of conduct against a student or employee (who reports experiencing or witnessing an incident of sexual harassment to the College) and requests an investigation of sexual harassment under this procedure, when the violation of College procedure is discovered in connection with the reported sexual harassment. The College may pursue disciplinary proceedings or sanctions, if the College determines that the report was not made in good faith or that the violation was egregious.

IX. Responsible Employees

Responsible Employees are not confidential resources and are required to report allegations of sexual harassment to the Title IX Coordinator promptly. All other employees are encouraged to report allegations to the Title IX Coordinator but are not required to do so.

Responsible Employees are required to report all relevant information they know about sexual harassment including the name of the respondent, the reporting party, any other witnesses, and the date, time, and location of the reported incident.

Responsible Employees include:

- All supervisors and managers. Supervisors and managers have a mandatory duty to report incidents of sexual harassment as defined by this procedure, other types of harassment and discrimination, the existence of a hostile, offensive, or intimidating work environment, and acts of retaliation.
- All employees in the office responsible for human resources, office responsible for student conduct, Department of Public Safety, College employees with direct reports or supervisees and the authority to impose discipline or corrective measures, and all College employees that hear student appeals including but not limited to financial aid, student records, and grade appeals.

Student employees are generally not considered Responsible Employees unless they have been specifically notified that they are Responsible Employees.

Responsible Employees must immediately report any allegations of sexual harassment to the Title IX Coordinator when the Responsible Employee becomes aware of or has reason to believe that a violation of this procedure has occurred. A Responsible Employee should not attempt to investigate the alleged incident prior to referral to the Title IX Coordinator.

Responsible Employees should inform the reporting party that the Responsible Employee has an obligation to report the alleged sexual harassment or misconduct to the Title IX Coordinator and/or to law enforcement directly. If possible, the Responsible Employee should inform the reporting party of their reporting obligation before the reporting party reveals any information to them. The Responsible Employee can also direct the reporting party to a Confidential Resource, as defined above in Section VI.

X. Intake and Initial Steps

A. Receipt of Report

After receiving a report of sexual harassment, the Title IX Coordinator, a Confidential Advocate, or the appropriate designee from the office responsible for human resources will contact the reporting party and respondent to explain rights under this procedure and invite the reporting party to an in-person meeting and discuss supportive measures with the parties.

B. Supportive Measures

When sexual or gender-based harassment occurs, the College's primary concern is for the safety, health, and wellness of those who are affected. The College offers a variety of resources and support to assist affected individuals, referred to as "supportive measures" as outlined below. The College encourages affected individuals to speak to someone about what happened and to obtain information about types of support that are available.

Supportive measures are non-disciplinary, non-punitive individualized services offered without fee or charge to the parties regardless of whether a formal complaint has been filed. The College will provide the parties with options for supportive measures and how to request available supportive measures. The College will provide such measures to the parties as appropriate and as reasonably available to restore or preserve equal access to the College's education program or activities and workplace. These measures are designed to protect the safety of all parties, protect the College's educational environment, or deter sexual harassment without unreasonably burdening either party. The College will provide supportive measures on a confidential basis and will not disclose that the College is providing supportive measures except to those with a need to know to enable the College to provide the service.

Supportive measures may include, but are not limited to: changes to academic, transportation, and working situation or other measures such as counseling, extensions of deadlines, other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, voluntary withdrawals, increased security and monitoring of certain areas of the campus, referrals to community-based counseling, medical, or other health services, referrals to the Employee Assistance Program, and other similar measures.

C. No-Contact Directive

At the discretion of the Title IX Coordinator, in consultation with other College officials, the College may issue Interim No-Contact Directives to promote safety and access to educational and employment opportunities. For the purposes of Title IX and this procedure, no-contact directives are mutual and apply equally to all parties. Students or employees who violate the terms of a No-Contact Directive may be subject to disciplinary action. To request a No-Contact Directive, a party should contact the Title IX Coordinator.

D. Student Emergency Removal

The College may remove a student respondent from the College's education program or activity or workplace on an emergency basis after it conducts an individualized safety and risk analysis according to the College's risk assessment program and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The Title IX Coordinator, in consultation with appropriate College officials, will ensure a risk assessment is conducted to determine if there is a safety risk to the campus. The College will consider any applicable disability laws and will evaluate the appropriateness of supportive measures in lieu of an emergency removal. All emergency removals must be coordinated and monitored through the Title IX Coordinator.

The College may not use emergency removal to address a respondent's threat of obstructing the sexual harassment investigation or destroying relevant evidence. Emergency removal is only available to address health or safety risks against individuals arising out of sexual harassment allegations, not to address other forms of harassment that a respondent might commit pending the processing of a complaint.

The Title IX Coordinator, in consultation with appropriate College officials, will conduct the individualized safety and risk analysis. The Title IX Coordinator will approve all emergency removals.

In all cases in which an emergency removal is imposed, the student will be given notice of the Emergency Removal and the timely opportunity to challenge the Emergency Removal decision. The respondent has the option to request to meet with the Title IX Coordinator prior to such Emergency Removal being imposed, or as soon thereafter as reasonably possible, to show cause why the Emergency Removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A reporting party and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. A respondent may be accompanied by an advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

At the discretion of the Title IX Coordinator, alternative coursework options may be made available to ensure as minimal an academic impact as possible on the parties. Violation of an emergency removal under this procedure will be grounds for discipline, up to and including dismissal or expulsion.

E. Employee Administrative Leave

The College may place a non-student employee respondent on administrative leave during the pendency of a grievance process described in the formal complaint process below. The College will follow any relevant operating procedures, collective bargaining agreements, or state law in placing an employee on administrative leave.

XI. Formal Complaint Grievance Process

A. Notice to Parties

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following notice in writing, to the parties:

- Notice of the College's Title IX grievance process;
- Notice of the allegations of reported sexual harassment with sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Statement that the respondent is presumed not responsible for the reported conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that the parties may have advisor of their choice, who may be, but is not required to be, an attorney;
- Notice that the parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source; and
- Inform the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during an investigation, the College decides to investigate allegations about the reporting party or respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice in writing of the additional allegations to the parties.

B. Dismissal of Formal Complaint

The College must investigate the allegations in a formal complaint. However, the College must dismiss the formal complaint and will not process the complaint under these procedures if any of the following three circumstances exist:

- If the conduct reported in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
- If the conduct reported did not occur in the College's education program or activity; or
- If the conduct reported did not occur against a person in the United States.

The College has discretion to dismiss a formal complaint or any allegation under the following circumstances:

- If at any time during the investigation or hearing a reporting party notifies the Title IX Coordinator in writing that the reporting party would like to withdraw the formal complaint or any allegations;
- If the respondent is no longer enrolled or employed by the College; or
- If there are specific circumstances that prevent the College from gathering evidence sufficient to reach a determination regarding responsibility as to the formal complaint or allegations.

If the respondent withdraws or resigns while the Title IX process is pending, the Title IX Coordinator will evaluate other options to ensure compliance with applicable College policies and procedures.

If the College dismisses the formal complaint or any allegations, the Title IX Coordinator shall simultaneously provide the parties with written notice of the dismissal and reason. The College will also notify the parties of their right to appeal.

The College may commence proceedings under other procedures after dismissing a formal complaint.

C. Consolidation of Formal Complaints

The College may, but is not required to, consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one reporting party against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

D. Presumption of Good Faith/Presumption of Non-Responsibility Until Final Determination

The investigation is a neutral, fact-finding process. The College presumes all reports are in good faith. Further, the College presumes the respondent is not responsible for the reported conduct until the College makes its final determination regarding responsibility at the conclusion of the grievance process.

XII. Training

The College will provide training to Title IX Coordinators, investigators, decision-makers, and any individual who facilitates an informal resolution process, on the definition of sexual harassment, the scope of the College's education program or activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train the College's Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

The College will ensure that the Title IX Coordinator, investigator, decision-maker, and facilitator receive training on:

- The definition of sexual harassment in this procedure;
- The scope of the College's education program or activity;
- How to conduct an investigation;
- The grievance process including conducting hearings, appeals, and informal resolution processes; and
- How to serve impartially, including avoiding: prejudgment of the facts at issue; conflicts of interest; and bias.

XIII. Bias or Conflict of Interest

The College's Title IX Coordinator, investigator, decision-maker, or any person designated by the College to facilitate an informal resolution process, will not have potential actual bias or conflict of interest in the investigatory, hearing, sanctioning, or appeal process or bias for or against reporting parties or respondents generally. Actual bias is an articulated prejudice in favor of or against one party or position; a generalized concern about the personal or professional

backgrounds, positions, beliefs, or interests of the decision-maker in the process is not a basis to determine bias.

XIV. Informal Resolution

If the College determines that a formal complaint is appropriate for informal resolution, it may provide the parties with the opportunity to participate in an informal resolution process, including mediation, at any time prior to reaching a determination regarding responsibility.

The College will provide the reporting party and respondent written disclosure of the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The College must obtain the parties' voluntary, written consent to the informal resolution process. If the parties reach an agreement, the College does not have to complete a full investigation and adjudication of a report of sexual harassment. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

XV. Timeline for Completion

The College will undertake its grievance process promptly and as swiftly as possible. The College will complete the investigation and reach its determination regarding responsibility or complete the informal resolution process within 180 calendar days.

When appropriate, the Title IX Coordinator may determine that good cause exists to extend the 180-calendar day period to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the parties, to account for College breaks or vacations, or due to the complexity of the investigation. The College will provide notice of this extension to the reporting party and respondent in writing and include the reason for the delay and anticipated timing of completion.

A party may request an extension from the Title IX Coordinator in writing by explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will

notify the parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

XVI. Role of Advisor

The role of the advisor is to provide support and assistance in understanding and navigating the investigation process.

The advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator has the right to determine what constitutes appropriate behavior of an advisor and take reasonable steps to ensure compliance with this procedure.

A party does not have a right to self-representation at the hearing; an advisor must conduct any cross-examination. The College must provide an advisor of its choice, free of charge to any party without an advisor in order to conduct cross-examination. If an advisor fails to appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing advisor. To limit the number of individuals with confidential information about the issues, each party may identify one advisor.

XVII. Use of Privileged Information

The College's formal complaint procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

XVIII. Investigations

The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure.

Both parties have the right to have an advisor present at every meeting described in this section.

A. Trained Investigators

The College will investigate Title IX formal complaints fairly and objectively. Individuals serving as investigators under this procedure will have adequate training on what constitutes sexual harassment and how the College's grievance procedures operate. The College will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence and complies with this procedure.

B. Burden of Gathering Evidence

The College, not the parties, has the responsibility to gather information and interview witnesses.

C. Notice of Investigative Interview

The College will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to a party whose participation is invited or expected, with sufficient time for the party to prepare to participate.

D. Investigative Report

The results of the investigation of a formal complaint will be set forth in a written report that will include at least all of the following information:

- A description of the circumstances giving rise to the formal complaint;
- A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
- A summary of the testimony of each witness the investigator interviewed;
- An analysis of relevant evidence collected during the investigation, including a list of relevant documents;
- A specific finding as to whether the allegations occurred using a preponderance of the evidence standard;
- A table of contents if the report exceeds ten pages; and
- Any other information deemed appropriate by the College.

The investigator will not make a determination regarding responsibility.

The investigator may redact information not directly related to the allegations or privileged information. However, the investigator will keep a log of information they do not produce to the parties. The investigator will provide this log only to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the parties but will maintain the log in the Title IX Coordinator's file, in the event it later becomes relevant.

E. Evidence Review

Both parties have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

Prior to the investigator preparing the final investigative report, the College will make available to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

The College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

XIX. Hearing

After completing an investigation and prior to making a determination regarding responsibility, the College will hold a live hearing to provide the reporting party and respondent an opportunity to respond to the evidence gathered before a decision-maker. Neither party may choose to waive the right to a live hearing, but the parties can choose whether to participate in the hearing or answer some or all cross-examination questions.

A. Notice

The College will provide all parties written notice of the date, time, location, participants, and purpose of the hearing with sufficient time for the party to prepare to participate.

B. Hearing Format

The College may provide a live hearing with all parties physically present in the same geographic location or, at the College's discretion or if either party requests, the College may provide any or all parties, witnesses, and other participants the ability to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other in real time. The College will make the information reviewed during the Evidence Review available at the hearing for reference and consultation. The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

At the hearing, the decision-maker(s) will permit the parties' advisors to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging

credibility. Only relevant cross-examination and other questions may be asked of a party or witness. Questions and evidence about the reporting party's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the reporting party's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct reported by the reporting party, or if the questions and evidence concerns specific incidents of the reporting party's prior sexual behavior with respect to the respondent and are offered to prove consent.

C. Decision-maker

The decision-maker will be free from conflict of interest or bias, including bias for or against reporting parties or respondents. In cases where the reporting party or respondent objects to the decision-maker on the basis of a conflict of interest, the reporting party or respondent may request the Title IX Coordinator select a different decision-maker. The reporting party or respondent must make this request to the Title IX Coordinator in writing at least five business days prior to the hearing.

The decision-maker may ask the parties and the witnesses questions during the hearing. The decision-maker must objectively evaluate all relevant evidence both inculpatory and exculpatory and must independently reach a final decision. The decision-maker will make a decision as to whether there has been a violation of this procedure based on the investigation report, written statements and responses of the parties, if any, to the evidence gathered, and any other relevant information provided during the hearing. The decision-maker must receive training on issues of relevance, how to apply the rape-shield protections for reporting parties, and any technology to be used at the hearing.

D. Presenting Witnesses

The College will provide the reporting party and respondent an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like parties, are not required to participate in the live hearing process.

Only relevant evidence will be admissible during the hearing. Relevant evidence means evidence, including evidence relevant to the credibility of a party or witness, having any tendency in reason to prove or disprove any disputed fact material to the allegations under investigation.

E. Cross-Examination

The College shall permit each party's advisor to ask the other party and any witness relevant questions, including questions challenging credibility. The party's advisor must conduct

cross-examination directly, orally, and in real time. A party may never personally conduct cross-examination.

Before a reporting party, respondent, or witness answers a question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The decision-maker need not provide a lengthy or complicated explanation in support of a relevance determination. If a party or witness disagrees with a relevance determination, that individual has the choice of either (i) abiding by the decision-maker's determination and answering the question or (ii) refusing to answer the question.

The decision-maker cannot rely on the statements or testimony of a party or witness who has refused to answer a question the decision-maker had found relevant unless the decision-maker reconsiders and changes the ruling before reaching the determination of responsibility. If the decision-maker changes the determination of relevance of an unanswered question, the decision-maker must explain the decision to reconsider the ruling in the written determination of responsibility.

The decision-maker cannot draw an inference about the determination of responsibility based solely on a party's or witness's absence from the live hearing or refusal to submit to cross-examination or to answer any questions.

The decision-maker may also ask any party or witness questions. If a party or witness refuses to respond to a decision-maker's questions, the decision-maker is not precluded from relying on that party or witness' statements.

F. Determinations of Responsibility

When the decision-maker makes a determination of responsibility or non-responsibility, the decision-maker will issue a written determination regarding responsibility, no later than 20 business days after the date that the hearing ends.

When making a determination regarding responsibility, a decision-maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A decision-maker may not make credibility determinations based on an individual's status as a reporting party, respondent, or witness. In evaluating the evidence, the decision-maker will use the preponderance of the evidence standard. Thus, after considering all the evidence it has gathered, the College will decide whether it is more likely than not that sexual harassment occurred.

The written determination will include:

- Identification of the allegations potentially constituting Title IX sexual harassment as defined in these procedures;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including who conducted the investigation and gave notifications to the parties. The determination will also state when, where, and the date the investigator interviewed the parties and witnesses, conducted site visits and the methods used to gather other evidence. The procedural section should also discuss the dates and how the parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing;
- Findings of fact supporting the determination. In making these findings, the decision-maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility;
- Conclusions regarding the application of the College's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the College imposes on the respondent;
- A statement of whether the College will provide the reporting party with remedies designed to restore or preserve equal access to the College's education program or activity. The College need not disclose to the respondent specific remedies that do not affect them as part of the written determination; and
- The College's procedures and permissible bases for the reporting party and respondent to appeal.

The College will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if the parties file an appeal, or if the parties do not file an appeal, the date on which an appeal would no longer be timely.

XX. Disciplinary Sanctions and Remedies

The College must have completed the grievance procedures (investigation, hearing, and any appeal, if applicable) before imposing disciplinary sanctions or any other actions that are not supportive measures against a respondent. If the decision-maker determines the respondent was responsible for conduct that constitutes sexual harassment, the College will take disciplinary action against the respondent and any other remedial action it determines to be appropriate. The action will be prompt, effective, and commensurate with the severity of the offense.

The College will also consider other remedies for the reporting party designed to restore or preserve the reporting party's equal access to education or other College offerings or benefits. Remedies for the reporting party might include, but are not limited to:

- Providing an escort to ensure that the reporting party can move safely between classes and activities;
- Ensuring that the reporting party and respondent do not attend the same classes or work in the same work area;
- Providing counseling services or a referral to counseling services;
- Providing referral to medical services;
- Providing academic support services, such as tutoring;
- Arranging for a reporting party, if a student, to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the reporting party's academic record; and
- Reviewing any prior disciplinary actions taken against the reporting party by the College to see if there is a causal connection to the reporting party's harassment that may have resulted in the reporting party's discipline (*i.e.*, poor attendance in a course that the respondent is also enrolled in).

Possible disciplinary sanctions for student respondents include but are not limited to written warning, disciplinary probation, educational outcomes, suspension, or expulsion. Possible disciplinary sanctions for employee respondents include but are not limited to disciplinary actions determined to be appropriate by the College and/or provided by the applicable collective bargaining agreement, which may include written or verbal reprimand, required training or counseling, suspension, or discharge.

XXI. Appeal of Dismissal of a Formal Complaint or of the Determination of Responsibility

A reporting party or respondent may appeal the College's determination regarding responsibility or the dismissal of a formal complaint or any allegations. A reporting party or respondent must submit a written appeal within five business days from the date of the notice of determination regarding responsibility or from the date of the College's notice of dismissal of a formal complaint or any allegations. An appeal must be submitted to the Title IX Coordinator.

XXII. Grounds for Appeal

The Title IX Coordinator will identify the decision maker for the appeals process. In filing an appeal of the College's determination regarding responsibility or the College's dismissal of a formal complaint, the party must state the grounds for appeal and a statement of facts supporting those grounds. The grounds for appeal are as follows:

- A procedural irregularity affected the outcome;
- New evidence was not reasonably available at the time the College's determination regarding responsibility or dismissal was made, and this new evidence could affect the outcome; or
- The College's Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against reporting parties or respondents generally or the individual reporting party or respondent that affected the outcome.

XXIII. Appeal Procedure

If the reporting party or respondent submit an appeal to the College, the College will:

- Notify the other party in writing within five business days of receiving a party's appeal;
- Allow the non-appealing parties at least ten business days from the date of receipt of the appeal to submit a written statement in support of, or challenging, the outcome;

The appeal decision-maker will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within 20 business days after the decision-maker on appeal receives the response to the appeal or the last day to provide a response. The College will provide the written decision simultaneously to both parties.

The decision-maker on appeal may extend or otherwise modify the deadlines provided above. Either party may seek an extension by submitting a written request to the appeal decision-maker explaining the need for the extension and the proposed length of the extension.

The decision-maker will respond to the request within 48 hours in writing and will inform the parties simultaneously whether the extension is granted.

XXIV. Retaliation Prohibited

The College prohibits any intimidation, threats, coercion, or discrimination against any individual who made a report or complaint of sexual harassment, or who testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Retaliation will be addressed under the appropriate College procedure.

XXV. Dissemination of Policy and Procedures

The College will publish its procedures related to Title IX on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining with the College.

XXVI. File Retention

The College will retain on file for a period of at least seven years after closing the case copies of:

- The original report or complaint;
- Any actions taken in response to the complaint, including supportive measures;
- The investigative report including all evidence gathered and any responses from the parties;
- The College's determination regarding responsibility;
- Audio or audiovisual recording or transcript from a hearing;
- Records of any disciplinary sanctions imposed on the respondent;
- Records of any remedies provided to the reporting party;
- Any appeal and the result;
- Any informal resolution and the result; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. College will make these training materials publicly available on its website.

The College will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

Approved: _____, 2024

Effective: 08/01/2020 to 07/31/2024

Revised: _____, 2024

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