

**APPENDIX B – SEXUAL MISCONDUCT POLICY: GRIEVANCE RESOLUTION  
PROCEDURES FOR REPORTS OF VIOLATIONS AGAINST EMPLOYEES**

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**APPENDIX B**

**SEXUAL MISCONDUCT POLICY:  
GRIEVANCE RESOLUTION PROCEDURES  
FOR REPORTS OF POLICY VIOLATIONS AGAINST EMPLOYEES<sup>1</sup>**

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<sup>1</sup> These procedures describe the process for resolving complaints filed pursuant to Providence College’s Sexual Misconduct Policy and they should be read and interpreted in conjunction with the Policy, including the behavioral standards, definitions, and prohibition against retaliation, which are part of the Policy. References to “this Policy” or “the Policy” in Appendix A refer to the Sexual Misconduct Policy.

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### **I. ROLE OF ADVISOR, DECISION-MAKER, TITLE IX COORDINATOR (Note: Key terms used in the Appendix are defined in the Policy.)**

**A. Role of the Advisor.** Reporting parties (complainants) and responding parties (respondents) may each identify one Advisor for support and consultation during any related meetings or grievance proceedings. An Advisor can be anyone from within the College or outside the College, including an attorney. No restrictions apply; however, a person asked to serve as an Advisor may decline to serve. Knowledge of the grievance resolution process is important to the Advisor's role; therefore, an Advisor who is unfamiliar with the College's process and rules of decorum will be asked to participate in a brief orientation program as a condition for service in this capacity. College employees who provide confidential support services, or who have an actual or perceived conflict of interest, may decline to serve as an Advisor. Even though reporting parties and responding parties are not obligated to choose an Advisor for support and consultation during each stage of the Formal Complaint resolution process, it is strongly recommended.

Generally, the Advisor's role is limited to providing support and consultation and an Advisor may not speak on behalf of a party nor actively participate in an investigation or proceeding; however, the Advisor may ask for procedural clarifications before, during, or after meetings or proceedings, and the Advisor may ask for a brief break for the benefit of the advisee. During a hearing in a Title IX case, however, the Advisor's role is expanded; i.e., the Advisor asks relevant questions and follow-up questions, including those challenging credibility, of witnesses and the other party that the advisee would like to ask directly but is not permitted to ask (this process is explained in the "Title IX Hearings" section of this Appendix). During a Title IX hearing, the Advisor can continue to provide support and consultation to an advisee, but cannot actively participate beyond asking questions.

The College reserves the right to remove from a meeting or proceeding any individual whose actions do not meet the College's expectations about decorum because they are disruptive or abusive. A party should select as an Advisor a person whose schedule allows attendance at the scheduled date and time of the meeting or proceeding because, normally, lengthy or multiple delays will not be allowed due to persistent scheduling conflicts of an Advisor. Communications regarding the case, including notices about meetings and proceedings, will take place between the College and each party unless otherwise required under the Title IX regulations. It is the choice and responsibility of each party to notify the Advisor of any communications between the College and the party.

**B. Role of the Decision-Maker.** The role of a decision-maker is to decide whether a responding party is "responsible" or "not responsible" for violating the Policy, and thus the Code of Conduct, or whether an appeal has merit. A decision-maker objectively evaluates relevant information and reaches a conclusion based on the preponderance of evidence standard of proof. If there is a finding of "responsible," a decision-maker will

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determine the appropriate sanction(s) for the responding party, and the measures taken to restore or preserve equal access to the College's education program or activity for the reporting party. Hearing officers and appeal officers are decision-makers.

**C. Role of the Title IX Coordinator.** Note: The Title IX Coordinator may designate certain duties and tasks to the Assistant Coordinator or to one of the Deputy Coordinators; therefore, references to the "Coordinator" may mean the Assistant or a Deputy Coordinator. Among the Title IX Coordinator's responsibilities is the management of the College's response to reports and complaints of sexual harassment. When the Title IX Coordinator has actual knowledge of a potential Policy violation, the Coordinator (or Assistant/Deputy Coordinator) promptly contacts the complainant (reporting party) to discuss the availability of supportive measures and to inform the complainant that they are available with or without the filing of a formal complaint. The Coordinator considers the complainant's wishes with respect to supportive measures and is responsible for the effective management of supportive measures. The Coordinator also explains to the complainant the process for filing, and the options for resolving, a formal complaint. The Coordinator reserves the right, in his/her sole discretion and in accordance with legal mandates, to amend procedures as necessary to assure an equitable process, and/or to protect the integrity of the process.

When a formal complaint is filed, the Coordinator promptly contacts the responding party to provide relevant information about the complaint and the grievance resolution processes, and to discuss the availability of supportive measures. When a formal complaint is filed and the process results in a finding of responsible, and remedial measures to restore or preserve equal access to the education program or activity to the reporting party are part of the outcome, the Title IX Coordinator will assure that such measures are provided.

### **II. RIGHTS AND RESPONSIBILITIES OF THE PARTIES -- TITLE IX AND NON-TITLE IX (AS APPLICABLE)**

1. The right to be treated with dignity and respect throughout the process.
2. The right to be informed about reasonably available supportive services and resources.
3. The right to receive assistance from the Office of Public Safety to file a criminal report.
4. The protection of one's privacy, with disclosures made on a need-to-know basis only or in accordance with legal requirements.
5. The protection against retaliation for making a good-faith report or participating in any proceeding under the Policy.
6. The responsibility to refrain from retaliating against anyone who makes a good-faith report or participates in any proceeding under the Policy.

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7. The opportunity to have an Advisor of one's own choosing and the opportunity to have the Advisor attend any meeting or proceeding at which the party's presence is anticipated by these procedures.
8. The right to receive written notice of meetings or proceedings at which the party's presence is invited or expected; this notice includes the date, time, location, participants, and purposes of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
9. The responsibility to be honest when providing information in connection with any report, investigation, hearing, or alternative resolution of a complaint.
10. The right of the responding party, prior to an initial interview with an investigator, to receive certain information about the College's grievance process, and notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
11. The right to be informed that information gathered by the College may be subpoenaed in criminal or civil proceedings and/or may be shared with law enforcement authorities.
12. The right to an equal opportunity (a) to present witnesses, and other inculpatory and exculpatory evidence; and, (b) to inspect, review, and respond to, any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.
13. The opportunity to submit a challenge to an investigator or decision-maker based on conflict of interest or bias.
14. The right to refrain from providing incriminating statements during the investigation and/or any proceeding, knowing that the process will continue without unreasonable delay with the information available.
15. The right to receive a written determination regarding responsibility and the right to appeal the determination for specified grounds, applying the preponderance of evidence standard of proof. Where there is a finding of responsibility, the reporting party has a right to expect the College to provide remedies designed to restore or preserve equal access to the College's education program or activity; such remedies may include the same individualized services provided as "supportive measures."

### **III. INTAKE MEETING WITH THE REPORTING PARTY – TITLE IX AND NON-TITLE IX**

When the Title IX Coordinator has actual knowledge of a claim of sexual harassment, the Coordinator will promptly contact the complainant (hereinafter referred to as the "reporting party") to schedule an Intake Meeting. At this meeting, the Coordinator will

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discuss with the reporting party the availability of supportive measures and other important topics, including the process for filing and resolving a formal complaint, and the process for pursuing an alternative resolution to the formal complaint. The Coordinator will provide the reporting party with written information related to these topics, which will include information about rights, options, and resources.

The Coordinator will discuss reasonably available supportive measures with the reporting party that are available with or without the filing of a formal complaint. Reasonably available supportive measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. The College will maintain as confidential any supportive measures provided to either party to the extent that maintaining such confidentiality would not impair the ability of the College to provide these measures.

When the reporting party reports prohibited conduct and requests anonymity (i.e., that no personally identifiable information be shared with the responding party), and/or requests that no further action be taken, the College will seek to honor the autonomy of the party to make the choice to file a formal complaint. If, to address serious health or safety concerns related to an individual or the College community, the Title IX Coordinator determines that it cannot honor the reporting party's choice, the Coordinator will inform the party that the College intends to file a formal complaint and to investigate the matter to the extent possible, but that the reporting party is not required to participate in the investigation or in any other actions or proceedings the College pursues.

### **IV. PRIVACY AND CONFIDENTIALITY: PROTECTING THE INTEGRITY OF THE PROCESS AND INDIVIDUALS INVOLVED IN THE PROCESS**

The College will take reasonable steps to protect the privacy of individuals involved in the matter and will disclose information only to persons with a need for specific information regarding the complaint, its investigation, and/or its resolution. The identity of persons with whom information has been disclosed by the College will be made available to the parties.

Reporting parties and responding parties may seek support and advice from individuals they trust both to protect their privacy and to refrain from taking retaliatory behavior. These trusted individuals may include family, friends, colleagues, medical and mental health treatment providers, spiritual counselors, attorneys, law enforcement authorities, and advisors (as advisors are defined in this Policy), and other trusted individuals. Otherwise, reporting parties and responding parties will be asked to maintain confidentiality until the matter is finally resolved.

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When seeking support and advice, parties should be aware that confidentiality is an important consideration. Disclosures of information about the case prior to resolution not only can interfere with the integrity of the grievance resolution process, but they also can cause serious and lasting harm to persons who are directly involved in the process. At each stage in the process, the reporting party, the responding party, advisors, and any witnesses will be asked to maintain confidentiality by refraining from making inappropriate disclosures, or disclosures in an imprudent or careless manner, that could compromise the integrity of the process and cause harm to the persons directly involved.

Retaliation at any time – prior to final resolution and after final resolution – is prohibited. For example, if, prior to final resolution, a responding party (or someone acting on the responding party's behalf) contacts the reporting party or a witness for the reporting party, the reporting party may make a retaliation claim. Retaliation of any kind is a severe and separate violation of this Policy; if the College finds that a retaliation claim has merit, the conduct may result in an additional complaint and consequences.

### **V. FORMAL COMPLAINT**

#### **A. Filing a Formal Complaint -- Title IX and Non-Title IX**

A formal resolution process or an alternative resolution process may be pursued only after a formal complaint has been filed. At the time of the filing of a formal complaint, the reporting party/complainant must be participating in or attempting to participate in the College's education program or activity. When a complaint has been filed, the Title IX Coordinator will identify the potential violations, notify the responding party of allegations, and schedule an Intake Meeting with the responding party.

The parties will receive information that includes the following: a statement that the responding party is presumed not responsible for the alleged conduct prior to the conclusion of the formal grievance process; a notice that the parties may have an advisor of their choice who may be, but is not required to be, an attorney; a notice that making knowingly false statements or knowingly submitting false information is prohibited; a notice that evidence gathered during an investigation may be inspected and reviewed; and, a notice that retaliation is prohibited. The parties will receive this information in advance of any investigation interview so that they have sufficient time for meaningful preparation.

After a formal complaint has been filed, the College retains authority to investigate the complaint and bring conduct charges against employees who resign or are placed on administrative leave from the College on an emergency basis.

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In rare circumstances, the Title IX Coordinator may determine that it is necessary to file a formal complaint when a reporting party decides not to or otherwise cannot file a formal complaint. In such a rare circumstance, the parties will be informed and provided with the Coordinator's rationale for taking such action.

### **B. Administrative Leave Assessment**

The College may determine that a responding party should be placed on administrative leave during the pendency of a grievance resolution process. If the College imposes an administrative leave, the Associate Vice President for Human Resources (or designee) will inform the responding party in a letter that also will include the terms and conditions for the leave. A violation of the terms and conditions associated with an administrative leave is grounds for termination from the College.

The College may notify the College community of the incident(s) giving rise to the formal complaint (without disclosing the reporting party's identity to preserve privacy) in a Timely Warning-Crime Alert or Safety Advisory. Other steps meant to reduce or eliminate health or safety risks may be taken.

### **C. Timeframes and "Good Cause" -- Title IX and Non-Title IX**

The College will make a good-faith effort to conclude the formal complaint resolution process in a reasonably prompt manner, normally within one-hundred (100) business days of the filing of a formal complaint. All time frames referenced in this section may be extended for "good cause." Although not all-inclusive, examples of circumstances that would support a "good-cause" determination are: (a) law enforcement authorities are conducting a criminal investigation and gathering evidence regarding the incident, and they have formally asked the College to temporarily delay our investigation; (b) additional time is necessary to ensure the integrity and completeness of the investigation; (c) in order to accommodate the availability of witnesses; (d) in order to account for College breaks or vacations; (e) in order to account for complexities of a case (e.g., the number of witnesses and the volume of information provided by the parties); (f) in order to pursue good-faith efforts to reach an alternative resolution; (g) in order to account for the need for language assistance or accommodation of disabilities; or, (h) in order to account for other legitimate reasons. In the event of an extension of time, the Title IX Coordinator/Deputy Coordinator will notify the parties in writing and provide the reason(s) for such extension.

#### **Time Frames:**

- Provide written notice of allegations to responding party, conduct Intake Meeting with responding party, and begin investigation, within 5 business days of the filing of a formal complaint.



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- If an Alternative Resolution Process is pursued, provide up to 30 business days to reach an agreement; with the formal complaint process halted during this time.
- Conclude investigation, provide preliminary report and information gathered to the parties within 35 business days of the date the investigation begins.
- If the Title IX Formal Complaint is “dismissed,” provide opportunity for parties to submit a written appeal within 3 business days of receipt of the written notification from the Title IX Coordinator.
- If the Title IX Formal Complaint is “dismissed,” and an appeal is filed, provide the parties with a written appeal decision within 5 business days of receipt of the last submitted appeal.
- Provide opportunity for parties to inspect and review the preliminary report and evidence gathered, and at least 10 days to submit a written response for the investigator to consider before completing the report.
- Within 5 business days of the date that written responses are due, provide the parties with notice with respect to any charges and the hearing.
- Provide opportunity for parties to review and respond to the investigative report not less than 10 days prior to any hearing.
- Provide written determination to parties regarding responsibility within 10 business day of conclusion of the hearing.
- Provide 5 business days for the parties to submit an appeal.
- Within 5 business days of receipt of the last submitted appeal, provide the parties with a written appeals decision.

### **VI. ALTERNATIVE (OR INFORMAL) RESOLUTION PROCESS (“ARP”)**

Although this process is the same for Title IX and Non-Title IX matters, the criteria for utilizing this process in Title IX matters differs from the criteria for utilizing this process in Non-Title IX matters. Specifically, an alternative resolution is not an option when an employee has been accused of Title IX-sexual harassment by a student; however, it is an option when an employee has been accused of non-Title IX sexual harassment that is covered under the Sexual Misconduct Policy by a student.

Alternative resolutions provide a path for addressing the situation at the most proximate level – as close to the source of concern – as possible. In cases involving claims of harm done to others, depending on the circumstances, an alternative resolution may be considered. Factors relevant to the decision may include: the degree of severity of the reported behavior; whether the key facts are in dispute; an assessment of intent and impact; whether the information gathered thus far suggests that there is no policy violation; and, other key considerations.



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For conduct matters covered by this Policy, the Alternative Resolution Process (“ARP”) may be pursued only after a formal complaint has been filed. Either party may request that the College consider the ARP. The Title IX Coordinator, in consultation with other College officials as needed, determines whether an alternative resolution may be appropriate; if so, the parties directly involved will participate in individual conference meetings with the Coordinator and/or the official designated to facilitate the resolution to ensure they understand the process before agreeing to pursue this option for resolving the formal complaint. The College and each party must voluntarily consent to engage in the process.

At any time prior to the conclusion of the ARP, the College or the parties may decide to withdraw from the process and pursue the formal resolution process. If the parties are not able to resolve the complaint through this process, the complaint would be resolved through the formal process unless the complaint is withdrawn.

Alternative Resolution Agreements are signed by the parties and the Title IX Coordinator and/or the facilitator of the process, and are enforced by the College. The parties are not permitted to revoke or appeal an Agreement. A report that an Agreement has been violated will be reviewed by the Title IX Coordinator, who may refer the report to the appropriate College official for further review and action.

If the responding party is found responsible for any related violations in the future, an Alternative Resolution Agreement can be considered during the sanctioning phase of that disciplinary proceeding. Records related to the process, including an Agreement, will be maintained in the Title IX Office, and in the Office of the Dean (for students) or the Office of Human Resources (for employees). Records related to an ARP may be subject to a lawfully issued subpoena or judicial order.

### **VII. INVESTIGATION – TITLE IX AND NON-TITLE IX**

The investigation will be equitable and adequate, and will be conducted by an impartial investigator assigned by the Title IX Coordinator. The Coordinator will appoint an investigator and the parties will be provided with an opportunity to challenge the appointment based on a conflict of interest or bias (this challenge must be substantiated and factual). Multiple complaints that arise out of the same set of facts or circumstances may be consolidated into one investigation. The investigation is a neutral fact-gathering process that will include interviewing and obtaining statements, and other relevant information from the parties and witnesses, if any. The burden of proof and the burden of gathering information sufficient to reach a determination regarding responsibility rests on the College and not the parties. If, during the investigation, the scope of inquiry expands beyond the claims initially made and shared with the responding party, the College will issue a supplemental written notice with additional details.

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The parties will have an equal opportunity to submit factual and corroborating information – in any format or medium, including electronic records. The parties will have the opportunity to identify witnesses, including expert witnesses, who may have relevant information, and to present other inculpatory and exculpatory evidence. If the parties choose to submit questions for the investigator to ask the other party or any witnesses, the investigator will consider those requests, ask relevant questions, and follow-up as needed. Parties and witnesses are expected to be honest and to provide accurate information during the formal complaint resolution process.

A party's health, medical, and treatment records are confidential and are protected from disclosure unless the party voluntarily provides written consent to release such records. Information that is protected by a legally recognized privilege will not be considered or relied upon by the investigator unless the privilege is waived.

The sexual history of either party will not be used to prove character or reputation. Information about a person's prior sexual history and practices is not relevant unless such information is offered to prove that someone other than the responding party committed the alleged conduct, or if questions and evidence concern specific incidents of a person's prior sexual behavior with respect to the responding party and is offered to prove consent. If a party seeks to present information about prior sexual history, it should be provided to the investigator during their initial meeting. The investigator will determine whether prior sexual history is relevant and both parties will be informed if information about prior sexual history is deemed relevant.

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. The investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed to achieve a better understanding of the issues under investigation.

If the reporting party is unwilling to participate in one or more stages of the grievance resolution process, the College's ability to gather relevant evidence and to pursue a charge may be compromised or severely limited. The College will respect the reporting party's choices and continue to provide support, no matter what they decide to do, and may continue to investigate to the extent possible. If the responding party is unwilling to participate in the investigation and/or a subsequent proceeding, the grievance resolution process will continue with the information available. The investigator will not draw any adverse inference from a decision by either of the parties not to participate during any phase of the process.

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### **VIII. DETERMINING THE APPROPRIATE HEARING PROCESS FOR RESOLVING A FORMAL COMPLAINT**

- A. The College will investigate the allegations in the formal complaint. If, based on that investigation, the Coordinator concludes that the alleged conduct constitutes sexual harassment under Title IX, the Coordinator will inform the parties that the case will move forward under the Sexual Misconduct Policy in accordance with the hearing process for a Title IX case (see Section X).
- B. If, based on the College's investigation, the Title IX Coordinator concludes that the alleged conduct would not constitute sexual harassment under Title IX, the Coordinator **will** take one of the following steps: (1) inform the parties that the case will move forward under the Sexual Misconduct Policy as a Non-Title IX case in accordance with the hearing process for a non-Title IX case (see Section XI); or, (2) inform the parties that the formal complaint will be dismissed and that the matter will be referred to the Office of Human Resources to determine whether the alleged conduct would constitute a violation of another College policy or code of conduct.
- C. At any time during the investigation (or during a hearing), the Title IX Coordinator **may** dismiss the formal complaint or any allegations in the complaint if: (1) the reporting party submits to the Coordinator written confirmation of intent to withdraw the formal complaint or any allegations in the complaint; (2) the responding party is no longer enrolled or employed by the College; or, (3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the complaint.
- D. Right to Appeal. Both parties may submit a written appeal of the Title IX Coordinator's action pursuant to Section VIII. B. or C. to the Executive Vice President. An appeal must clearly argue one or more of the grounds for appeal provided in Section XIII of this Appendix. The Executive Vice President (or designee) will decide the appeal(s) based on information submitted by the Coordinator and in the written appeal letter(s).

### **IX. PRE-HEARING PROCEDURES AND EXCHANGE OF INFORMATION -- TITLE IX AND NON-TITLE IX**

#### **A. Opportunity to Review the Preliminary and Final Investigative Report and Information**

The investigator will prepare a preliminary report that fairly summarizes the relevant evidence. After the investigation is concluded, the parties will be notified in writing of the opportunity to inspect and review the preliminary report and any additional information

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gathered, and at least ten (10) days to submit a written response for the investigator to consider before the report is completed. The parties are advised to make a reasonable effort to submit a response that does not exceed ten (10) double-spaced pages in length. The parties and their advisors must sign a Non-Disclosure Agreement before the College will permit access to the report, other information gathered, or any other information deemed by the College to be confidential or sensitive in nature. If the College determines that the Agreement has been violated in any manner, the College will take any and all action deemed appropriate at the time, including disciplinary action against the offending party.

Within five (5) business days of the date that written responses are due, the parties will be informed of conduct charges and will be provided with the opportunity to inspect and review the Final Investigative Report not less than ten (10) days prior to the date scheduled for a hearing. The Report will fairly summarize relevant evidence. The parties also will be informed as to the identity of the hearing officer(s) and given an opportunity to challenge a hearing officer based on a conflict of interest or bias (any challenge must be substantiated and factual). Either party may request to participate in the hearing in a location or space separated from the other party. The College may determine that the hearing will be conducted virtually, or that some participants will participate in person and others will participate virtually and remotely.

### **B. Pre-Hearing Meeting**

The individual appointed to serve as the hearing chairperson will schedule a meeting with each of the parties and their advisors to discuss the process, answer questions, and receive input. Prior to or at these meetings, the parties will provide the chairperson with a list of witnesses they would like to attend the hearing for the purpose of answering questions (including whether a proposed witness was interviewed by the investigator, and if not, the reason), and any new and relevant information they would like considered that was not provided to the investigator (and if not, the reason). The parties and their advisors will be provided with guidelines for decorum and for asking relevant questions during the hearing, instructions related to participation in the hearing in real time (including whether participation will be in person or remote). At these meetings or soon thereafter, the chairperson will provide the parties with a final witness list. The parties are strongly encouraged to submit cross-examination questions they plan to ask the other party at least 48 hours in advance of the hearing. This will permit the hearing chairperson to consider these questions for relevancy and provide feedback to the parties before the hearing begins.

## **X. TITLE IX HEARING**

The hearing will be live. Live hearings may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any and all parties,

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witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. There will be a single verbatim record, such as an audio recording or a transcript, of the hearing (excluding deliberation). The recording is created for two limited purposes only: for reference by the hearing officer(s) during deliberations and for review by the appeal officer during an appeal. No other recordings of hearings are allowed, and no other access to the recording is permitted. The recording, and all other records associated with the case, are the property of the College

The hearing is closed to persons other than those who are directly involved. The parties and their respective advisors may choose to attend the entire portion of the hearing during which information is provided to the hearing officer(s). Witnesses are permitted to attend the hearing only when they are answering questions.

Each party will be provided with the opportunity to provide an opening statement lasting approximately five (5) minutes or less. Each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Either party may ask that the hearing be conducted with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the party or witness answering questions. Before a party or witness answers a question, a decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to ask cross-examination questions on behalf of that party.

The sexual history of either party will not be referenced during the hearing to prove character or reputation. 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 responding party committed the alleged conduct, or if the questions and evidence concern specific incidents of the reporting party's prior sexual behavior with respect to the responding party and are offered to prove consent. (These are referred to as rape-shield protections.)

Records with a legally-recognized privilege, such as medical treatment records, may not be used during the hearing unless the individual or entity holding the privilege waives the privilege. Any waiver must be in writing and should be executed at least 48 hours in advance of the hearing.

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The standard of proof for determining whether the responding party violated the Sexual Misconduct Policy for all hearings is preponderance of evidence. If the responding party is found responsible, the decision-maker(s) shall determine the respondent's sanction(s) and the measures designed to restore or preserve the complainant's equal access to the College's education program or activity.

The parties simultaneously will be provided with an Outcome Letter that includes the following information:

- a description of the allegations potentially constituting sexual harassment;
- a description of the procedural steps in the case;
- findings of fact supporting the decision;
- conclusions regarding the application of the Policy/Code to the facts;
- a statement of, and rationale for, the result for each conduct charge, to include the finding, any sanctions imposed and any remedial measures provided; and,
- the procedures and grounds for appeal.

### **XI. NON-TITLE IX HEARING**

The hearing will be live. The hearing is closed to persons other than those who are directly involved. The parties and their respective advisors may choose to attend the entire portion of the hearing during which information is provided to the hearing officer(s). Witnesses are permitted to attend the hearing only when they are answering questions. There will be a single verbatim record, such as an audio recording or a transcript, of the hearing (excluding deliberation). The recording is created for two limited purposes only: for reference by the hearing officer(s) during deliberations and for review by the appeal officer during an appeal. No other recordings of hearings are allowed, and no other access to the recording is permitted. The recording, and all other records associated with the case, are the property of the College.

Hearings are internal to the College and are not an extension of any external judicial system. Procedures are fundamentally fair to the parties and are notably different from those used in a civil or criminal proceeding. The College's procedures for Non-Title IX hearings are notably different from the Title IX regulations with respect to, for example, how questions must be asked, what type of information is relevant, the impact of parties choosing not to

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submit to and answer all cross-examination and follow-up questions, and what information a hearing officer may or may not consider in determining responsibility.

Information either party wishes to be considered by the hearing officer(s) must be submitted to the investigator(s) during the investigative process. In the absence of good cause, as determined by the chairperson, the parties will not be permitted to provide documents, items, or other information, or names of potential witnesses, at the hearing that were not provided to the investigator(s) during the investigation. The chairperson will determine whether new information will be received or a new witness will testify. If the chairperson determines that unresolved issues exist that would be clarified by the presentation of new information or the appearance of a new witness, the hearing may be suspended and reconvened in a timely manner to receive such additional information or to hear from the new witness.

Each party will be provided with the opportunity to provide an opening statement lasting approximately five (5) minutes or less. After opening statements, witnesses, if any, and the parties will answer questions from the hearing officer(s). The parties may then submit questions for witnesses (if any) to the chairperson, who can disallow any questions that are irrelevant, repetitive, or abusive, and, if warranted, rephrase any question. Questions should be relevant and directly related to the charge. The parties may submit questions for the other party to the chairperson, who may disallow any questions that are irrelevant, repetitive, or abusive, and, if warranted, rephrase any question. The hearing officer(s) and the parties will have an opportunity to ask follow-up questions. Questions submitted by the parties for witnesses and each other that are deemed relevant by the chairperson will not be asked by the parties nor by their advisors; rather, the chairperson will ask those questions.

The sexual history of either party will not be used during the hearing to prove character or reputation. Questions and evidence about a reporting party's sexual history and practices are not relevant unless such information is offered to prove that someone other than the responding party committed the alleged conduct, or if the questions and evidence concern specific incidents of a reporting party's prior sexual behavior with respect to the responding party and are offered to prove consent. (These are referred to as rape-shield protections.)

Records with a legally-recognized privilege, such as medical treatment records, may not be used during the hearing unless the individual or entity holding the privilege waives the privilege. Any waiver must be in writing and should be executed at least 48 hours in advance of the hearing.

The standard of proof for determining whether the responding party violated the Sexual Misconduct Policy for all hearings is preponderance of evidence. If the responding party is found responsible, the decision-maker(s) shall determine the respondent's sanction(s) and



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the measures designed to restore or preserve the complainant's equal access to the College's education program or activity.

The parties simultaneously will be provided with an Outcome Letter that includes the following information:

- a description of the allegations potentially constituting sexual harassment;
- a description of the procedural steps in the case;
- findings of fact supporting the decision;
- conclusions regarding the application of the Policy/Code to the facts;
- a statement of, and rationale for, the result for each conduct charge, to include the finding, any sanctions imposed and any remedial measures provided; and,
- the procedures and grounds for appeal.

### **XII. SANCTIONS FOR AN EMPLOYEE FOUND RESPONSIBLE -- TITLE IX AND NON-TITLE IX**

Employees found responsible for violating the Sexual Misconduct Policy will receive appropriate, and timely sanctions. The decision is not final, and no sanction will be imposed, until after an appeal process, if any, has concluded. Possible sanctions are as follows: termination; suspension; tenure revocation; non-renewal of a contract or non-reappointment; issuance of a No-Contact Directive; loss or denial of certain privileges; work reassignment or restructuring of position and duties; rescission of committee or other types of special or leadership appointments; administrative withdrawal from a course with or without a refund or credit; required professional evaluation or assessment with a signed release permitting the College to confirm participation and any follow-up recommendations. Sanctions are imposed with the goal of ending prohibited conduct, preventing its recurrence, and remedying its effects, while supporting the College's mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components.

Additionally, if an employee-respondent takes a leave of absence, resigns from, or otherwise leaves the College after an investigation of a formal complaint has begun and before a charge is filed and/or resolved, or before an alternative resolution is reached, the College will maintain a record for the employee noting that a complaint was pending at the time of separation.

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### **XIII. OPPORTUNITY TO FILE AN APPEAL AND GROUNDS FOR APPEAL -- TITLE IX AND NON-TITLE IX**

#### **A. Grounds for Appeal**

The reporting party and the responding party have the right to appeal a determination as to responsibility to the Executive Vice President (or designee). An appeal must clearly and thoroughly present an argument for each ground referenced in the written appeal.

Possible Grounds for Appeal:

1. Procedural Irregularity – The departure from designated procedures resulted in significant prejudice that affected the outcome.
2. New Information – New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could have affected the outcome.
3. Conflict of Interest or Bias – The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome.
4. Excessive or Inappropriate Sanction – The sanction imposed is either excessive or not appropriate for the violation.

#### **B. Procedures for Appeals**

Within five (5) business days of the emailing of the Outcome Letter(s), either party, or both parties, may submit a written appeal to the appeal officer identified in the Letter. The parties will have the opportunity to review the appellate letter and submit a written response in support of, or challenging, the outcome and the information in the appellate letter; any response must be submitted within five (5) business days of the notification that an appeal has been filed. The appeal officer has discretion to decide the appeal based on a separate meeting with each party, a meeting with other officials involved in the case, and/or written submissions and the case file. The parties will receive via email an Appeal(s) Outcome Letter within ten (10) business days of the filing of the last-filed appeal. The appeal officer has authority to grant or deny the appeal(s), to modify the findings and/or sanctions, or, to remand the case for further proceedings as directed. The decision of the appeal officer is final.

### **XIV. RECORDS**

The College will retain the following records for a period of seven (7) years: investigations; audio recording or transcripts of hearings; outcomes (including any sanctions imposed on

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the respondent and any remedies designed to restore or preserve the complainant's equal access to the College's education program or activity); appeals and outcomes; alternative resolution; and, all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates alternative resolutions. The College also will retain for a period of seven (7) years, records of any action, including any supportive measures, taken in response to a report or formal complaint of sexual harassment about which it has "actual knowledge," including documentation of the basis for the College's conclusion that its response was not deliberately indifferent, and documentation that it has taken measures designed to restore or preserve equal access to the College's education program or activity; if no supportive measure is provided to the complainant, documentation will include the reasons why such a response was not clearly unreasonable in light of the known circumstances.