

## **Title IX Sexual Harassment Investigation and Resolution Procedures**

Knox College has established a Policy Against Discrimination and Harassment (“Policy”) that articulates the College’s behavioral standards and descriptions of prohibited conduct. These Title IX Sexual Harassment Investigation and Resolution Procedures (the “Title IX Procedures”) apply to (1) complaints of Title IX Sexual Harassment or (2) complaints that include acts of both Title IX Sexual Harassment and Sexual Misconduct, where the allegations involve the same parties or are otherwise materially related that involve Knox College students, staff, or faculty.

### **I. FORMAL COMPLAINT**

A “Formal Complaint” is a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Title IX Sexual Harassment in accordance with these Title IX Procedures. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

A Complainant may file a Formal Complaint to the Title IX Coordinator in person, by regular mail, or by email or by any other means that results in the Title IX Coordinator receiving the document. In-person Reports must be made during normal business hours, but Reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours. No person may submit a Formal Complaint on the Complainant’s behalf. At the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the College’s education programs or activities.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the College if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College Community. Factors the Title IX Coordinator may consider in determining whether to file a Formal Complaint on behalf of the College include (but are not limited to):

- Whether the alleged Respondent is likely to commit additional acts of sexual or other violence, such as:

- Whether there have been other Title IX Sexual Harassment about the same alleged Responding Party;
- Whether the alleged Respondent has a history of arrests or records from a prior school indicating a history of violence
- Whether the alleged Respondent threatened further sexual misconduct or interpersonal violence or other violence against the Reporting Party or others;
- Whether the Title IX Sexual Harassment was committed by multiple perpetrators
- The Title IX Sexual Harassment was perpetrated with a weapon
- The Complainant is a minor
- Knox College possesses other means to obtain relevant evidence of the Title IX Sexual Harassment (e.g., security cameras or personnel, physical evidence)
- The Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the College will commence an investigation and resolution process as specified in these Title IX Procedures. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation. In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

If neither the Complainant nor the Title IX Coordinator files a Formal Complaint, the investigation and resolution procedures will not be applied, but the Title IX Coordinator may assess the matter under another College's policy/procedure and/or refer the matter to other College offices, as appropriate.

## **II. COUNTER-COMPLAINTS**

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Although the College permits the filing of counter-complaints, the Title IX Coordinator will use the Preliminary Assessment, described in Section IX of the Policy, to assess whether the allegations in the counterclaim are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation.

Counter-complaints determined to have been reported in good faith will be processed using the Investigation and Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

### **III. CONSOLIDATION OF FORMAL COMPLAINTS**

The College may consolidate Formal Complaints as to allegations of Title IX Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances. Where the investigation and resolution process involves more than one Complainant or more than one Respondent, references in this document to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Title IX Sexual Harassment.

### **IV. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and **must** dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint did not occur in the College’s Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States.

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section X, Appeal. The Title IX Coordinator may assess the matter under the College’s Discrimination and Harassment Investigation and Resolution procedures or refer the matter to other College offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of these Title IX Sexual Harassment Procedures, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

### **V. NOTICE OF FORMAL COMPLAINT**

Within five (5) business days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of or a hyperlink to the Policy Against Discrimination and Harassment and these Title IX Procedures.
- Sufficient details known at the time so that the parties may prepare for an initial

interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident (if known);

- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice.
- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in the Access to Evidence section.
- Notifying the Complainant and Respondent of the College's prohibitions on retaliation and false statements specified in the Policy.
- Information about resources that are available on campus and in the community.

Should the College elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the College will provide a supplemental written notice describing the additional allegations to be investigated.

## **VI. PRESUMPTION OF NON-RESPONSIBILITY**

From the time a Report or Complaint is made, a Respondent is presumed not responsible for the alleged Title IX Sexual Harassment until a determination of responsibility is made final.

## **VII. STANDARD OF PROOF**

The College uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that College will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## **VIII. OPTIONS FOR RESOLUTION**

### **A. INFORMAL RESOLUTION**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator after receiving Notification of the Formal Complaint and prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, verbally or in writing. The College will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution

before proceeding and will not pressure the Parties to participate in Informal Resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Title IX Sexual Harassment against a student.

Before initiation of an Informal Resolution process, the College will provide the Parties with a written notice that explains:

- The allegations.
- Identifies the person responsible for facilitating the Informal Resolution process.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the College's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Investigation and Resolution Procedures arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information the College will maintain, and whether and how it could disclose such information for use in its Investigation and Resolution Procedures

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time prior to reaching an Informal Resolution agreement and initiate or resume the Resolution Process.

If an investigation is already underway, the Title IX Coordinator has sole discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

The College offers the following types of Informal Resolution:

**1. Educational Conversation**

The Complainant(s) may request that the Title IX Coordinator or designee address their allegations by meeting (with or without the Reporting Party/Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator or designee may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

**2. Agreement-Based Resolution**

Agreement-Based Resolution is an alternative where the Parties each voluntarily agree to resolve the complaint in a way that does not include an investigation and does not include any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If the College offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Title IX Coordinator must still take other prompt and effective steps as needed to ensure that Title IX Sexual Harassment does not continue or recur within the College's education program or activity.

The Title IX Coordinator must approve of the use of the Agreement-Based Resolution process and approve the final agreement between the parties. Agreement-Based Resolution may be initiated at any time prior to the release of the final determination. Because Agreement-Based Resolution does not involve an investigation, there is not any determination made as to whether a Respondent violated this Policy. The process is described in more detail in Appendix A.

The Title IX Coordinator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the

reported conduct, and that the matter must instead be resolved through an alternate process.

## **B. ACCEPTANCE OF RESPONSIBILITY**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Title IX Coordinator is authorized to accept that admission, adopt it as the final determination, and collaborate with the appropriate sanctioning authority to administer sanctions. A Respondent who accepts responsibility waives their right to appeal. If the Respondent rejects the final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

## **C. FORMAL RESOLUTION**

### **1. Investigation**

#### **a. Commencement and Timing**

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the College and not with the parties. The investigation will culminate in a written investigation report that will be submitted to the hearing officer during the hearing process. Although the length of each investigation may vary depending on the totality of the circumstances, the College strives to complete each investigation within thirty (30) to forty-five (45) business days of the transmittal of the written notice of Formal Complaint.

#### **b. Equal Opportunity**

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant

to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

**c. Documentation of Investigation**

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

**d. Access to the Evidence**

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the College may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) business days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.



**e. Investigation Report**

After the period for the parties to provide any written response as specified in the section above, Access to the Evidence, has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

**2. Hearing Process**

**a. Hearing Officer**

The Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in the Access to the Evidence section (VIII.C.1.d).

**b. Hearing Notice and Response to the Investigation Report**

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the College's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) business days from the date of transmittal of the written notice specified in this section.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from

consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in Section IX.B, Sexual History, or for any other reason;

- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the College's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the College provide an advisor for purposes of conducting questioning as specified in Section XII, Advisors of Choice.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Title IX Sexual Harassment.

### **c. Pre-Hearing Conference**

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary College personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

At the hearing officer's discretion, the pre-hearing conference may be

conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

**d. Issuance of Notices of Attendance**

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any College employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The College will not issue a notice of attendance to any witness who is not an employee or a student. Parties can arrange for any expert witness or witness not associated with the College to attend.

**e. Hearing**

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the College's Hearing Procedures. The hearing will be audio or audio visually recorded. A recording or transcript will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary College personnel together in the same physical location.

However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio. Neither party will be compelled to testify in the physical presence of the other party.

At the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to make a brief opening statement.
- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non- testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary College personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete. The parties will not be permitted to question the other party or any witness directly.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to the Access to the Evidence section (VIII.C.1.d).

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section are met.

**f. Subjection to Questioning**

The hearing officer may consider statements of persons who were not present at the hearing, or persons who were present but not subject to cross-examination, so long as the statements are deemed reliable and relevant by the hearing officer and not otherwise subject to exclusion under these Procedures. Such statements may include, but are not limited to, statements in police reports or other official reports, medical records, court records and filings, investigations notes of interviews, investigation transcripts, emails, written statements, affidavits, text messages, and social media postings.

In addition, the hearing officer may consider the testimony or other statements of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested the attendance of the witness at the hearing.

In applying this section, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

**g. Deliberation and Determination**

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the Policy as alleged in the Formal Complaint.

**h. Discipline and Remedies**

In the event the hearing officer determines that the Respondent is responsible for violating this Policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate College official with disciplinary authority over the Respondent and such official or designee will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing Supportive Measures or other remedies will be provided to the Complainant.

**i. Written Decision**

After reaching a determination and consulting with the appropriate College official and Title IX Coordinator, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Title IX Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and

witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;

- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Title IX Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate College official;
- Whether the Complainant will receive any ongoing Supportive Measures or other remedies as determined by the Title IX Coordinator; and
- A description of the College's process and grounds for appeal.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in the Appeal section.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the College strives to issue the hearing officer's written determination within seven (7) to (10) business days of the hearing.

### **3. Dismissal During Investigation or Adjudication**

The College may dismiss a Formal Complaint at any point during the investigation or hearing process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the College, as the case may be; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section XI., Appeal. The Title IX Coordinator may assess the subject matter of the Formal Complaint under the College's Discrimination and Harassment Investigation and Resolution Procedures or refer the subject matter of the Formal Complaint to other College offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to the Title IX Sexual Harassment Procedures, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

## **IX. INADMISSIBLE EVIDENCE AND IMPERMISSIBLE QUESTIONING**

### **A. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION**

During the investigation and hearing processes, the investigator and hearing officer, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;
- unless the College has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

### **B. SEXUAL HISTORY**

During the investigation and hearing processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are



offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

## **X. POTENTIAL OUTCOMES FOLLOWING A FINDING OF A POLICY VIOLATION**

### **A. SANCTIONS**

When a determination is made that an individual is responsible for an act or acts of Title IX Sexual Harassment, the appropriate sanctions are determined based on several factors, including the severity of the conduct and any prior policy violations. The potential disciplinary sanctions that may be imposed along with other corrective actions for a finding of a Policy violation are set forth below. One or more of these sanctions may be imposed at the discretion of the College. Any sanctions imposed will be proportionate with the violation. In imposing disciplinary sanctions, the College will consider the impact of separating a student from their education.

- Verbal or written warning.
- Mandatory educational programming or projects.
- Community service.
- Probation.
- Removal from housing or other campus programs/activities/leadership positions.
- Restrictions regarding entering certain buildings or areas of campus.
- Performance improvement/management process (employees only).
- Suspension from school or employment (with or without pay, in the case of employees).
- Termination of contract with the College; and/or
- Dismissal or other separation from the College.
- Loss of privileges.
- Required activities such as drug or alcohol counseling.

## **B. REMEDIES**

When a determination is made that an individual is responsible for an act or acts of Title IX Sexual Harassment, the College may also offer additional measures, and/or take other action, to eliminate any hostile environment caused by the Title IX Sexual Harassment, prevent the recurrence of any Title IX Sexual Harassment, and remedy the effects of the Title IX Sexual Harassment on the Complainant and the College community. Remedies that may be offered or provided to a Complainant may include the same individualized services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Additional corrective actions may include but are not limited to support services and accommodations such as escorts, counseling and medical services, academic or residential accommodations and support for one or both parties. Corrective actions and remedies at the level of the institution may include but are not limited to providing and/or requiring appropriate forms of counseling and training, developing educational materials and programming, implementation of revised policies and procedures, undertaking climate surveys and other mechanisms to identify and address patterns of violations.

In no event will a party in matters involving an alleged violation of the Policy be required to abide by a nondisclosure agreement that would prevent disclosure of the outcome

## **XI. APPEAL**

Either party may appeal the determination of a hearing or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.
- The sanction is disproportionate to the violation.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) business days of the date they receive notice of dismissal or determination they wish to appeal.. The appeal must be submitted in writing to the Title IX Coordinator, who will appoint an appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the above grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the Title IX Coordinator will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the Title IX Coordinator determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the Title IX Coordinator will dismiss the appeal and provide written notice of the same to the parties.

If the Title IX Coordinator confirms that the appeal is timely and invokes at least one permitted ground for appeal, the Title IX Coordinator will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) business days. The Title IX Coordinator shall appoint an appeal officer. The Title IX Coordinator will provide the appeal officer with any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties within seven (7) business days that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the College strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

## **XII. ADVISORS OF CHOICE**

From the point a Formal Complaint is made, and until an investigation, hearing, and appeal are complete, both parties are entitled to bring an advisor of their choice to any meetings, interviews, and hearings that are part of the investigation, resolution, and appeal process, provided that the involvement of the advisor does not result in undue delay of the meeting or interview. The advisor may be, but is not required to be, an attorney.

Except for the questioning of the other party and any witnesses, during the hearing, the role of the advisor of choice is limited to consulting privately with the party they accompany. The advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the College about the matter without the party being included in the communication. More about the role of the advisor may be found in Appendix B.

In the event a party's advisor of choice engages in material violation of the parameters specified in Appendix B, the College may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in Section VIII.C.2.e, the College will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The College will have sole discretion to select the advisor it provides. The College is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in Section Section VIII.C.2.e.

### **Title IX Sexual Harassment Investigation & Resolution Procedures Updated 1/30/2025**

Some language in this policy and in the Discrimination & Harassment Investigation and Resolution procedures is adapted from the ATIXA One Policy, Two Procedures (1P2P) Model. Version 6.0 ©2024 ATIXA. Used with Permission.

## **APPENDIX A: AGREEMENT-BASED INFORMAL RESOLUTION**

### **I. Initiating the Agreement-Based Resolution Process**

Prior to the initiation of Agreement-Based Resolution, the Title IX Coordinator will provide the Parties written notice that includes:

1. The specific allegation and the specific conduct that is alleged to have occurred;
2. The requirements of the Agreement-Based Resolution process;
3. Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared, and whether the College could disclose such information for use in a future Resolution Process, including an investigation and Resolution Process arising from the same or different allegations, as may be appropriate;
4. Notice that an agreement resulting from the Agreement-Based Resolution process (an Agreement) is binding only on the parties and is not subject to appeal;
5. Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
6. A statement indicating that the decision to participate in the Agreement-Based Resolution process does not presume that the conduct at issue has occurred;
7. A statement that the Respondent is presumed not responsible for violating this Policy, unless Respondent admits to violations of this Policy;
8. An explanation that all parties may be accompanied by an Advisor of their choice, who may be a parent, colleague, friend, or attorney;
9. A statement that any party has the right to withdraw from the Agreement-Based Resolution process and initiate or resume investigation and resolution procedures at any time before agreeing to a resolution;
10. Information regarding Supportive Measures, which are available equally to the parties; and
11. The potential terms that may be requested or offered in an Agreement-Based Resolution Agreement.

## **II. Facilitating an Agreement**

If all Parties are willing to explore Agreement-Based Resolution, the Title IX Coordinator will then meet separately with each party to discuss the Agreement-Based Resolution process and facilitate an Agreement.

If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Agreement-Based Resolution process, or the Title IX Coordinator does not believe that the terms of the Agreement or continuing the Agreement-Based Resolution process is appropriate, the Title IX Coordinator may decide that the reported conduct will instead be addressed through the Investigation and Resolution Process. The Title IX Coordinator will inform the parties of such a decision, in writing.

Agreement-Based Resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against Reporting and/or Responding Parties generally or regarding the specific parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. Investigators or Decision Makers for the matter may not facilitate an Agreement-Based Resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

- One of the parties will change classes or housing assignments;
- The Parties will not communicate or otherwise engage with one another;
- Completion of a training or educational project by the Respondent;
- Engage in a restorative justice process or facilitated dialogue;

To facilitate Agreement-Based Resolution, information shared by any party will not be used in any related Resolution Process of the same complaint under this policy. No evidence concerning the allegations obtained within the Agreement-Based Resolution process may be disseminated to any outside person, provided that any party to the Agreement-Based Resolution process may generally discuss the allegations under investigation with a parent, Advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an Agreement-Based Resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

### **III. Finalizing the Resolution Agreement**

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once an Agreement is signed, no appeal is permitted. The Agreement-Based Resolution process is generally expected to be completed within twenty-one (21) business days and may be extended by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate. Any violations of the terms of the Resolution Agreement may result in disciplinary action.

## **APPENDIX B: ADVISORS OF CHOICE**

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing officer.

### **A. Who Can Serve as an Advisor**

The Parties may each have an Advisor ( friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the grievance process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>1</sup> Parties have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

### **B. Advisor's Role in the Formal Resolution Process**

Advisors should help the Parties to prepare for each meeting or hearing and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their

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<sup>1</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.



advisee, with the exception of conducting cross-examination during a hearing, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the Parties' Advisors. The Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the Parties and witnesses.

### **C. Advisor Policy Violations**

Any Advisor who oversteps their role, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the College's established rules of decorum, including engaging in behavior or advocacy that harasses, abuses, or intimidates either party, a witness, or an individual investigating or resolving the complaint, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **D. Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to receive copies of the draft and final investigation reports, as well as the directly related evidence file. Advisors are expected to maintain the confidentiality of the records the College shares with them. The records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's confidentiality expectations.

### **E. Advisor Expectations**

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings/interviews/hearings when planned. The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend

a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not, and whether they are selected by a party or provided by the College. Advisors are expected to advise without disrupting proceedings.