

***NOTE* This Sexual Misconduct Policy is adopted pursuant to Title IX of the Educational Amendments of 1972 and its implementing regulations at 34 CFR § 106 and should be construed to be consistent with Title IX and those regulations. The effective date of this policy is August 14, 2020. Presbyterian College is currently reviewing and revising other College policies to insure conformity with this Policy. In the case of any inconsistency between the terms of any other College policy and this one, the terms of this Policy shall prevail to the extent that Title IX is implicated in the matter.**

**PRESBYTERIAN COLLEGE
SEXUAL MISCONDUCT POLICY**

Revised August 2020

TABLE OF CONTENTS

ARTICLE I. Introduction and Terminology	1
1.01 Notice of Nondiscrimination and Background.....	1
1.02 Title IX Coordinator.....	1
1.03 Reporting Sexual Misconduct.....	1
1.04 Confidential Support and Resources.....	1
1.05 Inquiries Concerning this Policy and College Compliance.....	2
1.06 Applicability of this Policy.....	2
1.07 Sexual Misconduct Board.....	2
1.08 Definitions.....	2
1.09 Standard of Proof.....	5
1.10 Sanctions and Remedies.....	5
ARTICLE II. Statements of Policy	6
2.01 Prohibition on Sexual Misconduct	6
2.02 Prohibition on Retaliation.....	6
2.03 Prohibition on Providing False Information or Interfering with an Investigation	7
2.04 Amnesty.....	7
2.05 Confidentiality and Privacy.....	7
2.06 Prompt Resolution.....	7
2.07 Presumption that Respondent is Not Responsible.....	8
2.08 Impartiality and Conflicts of Interest.....	8
2.09 Training.....	8
2.10 Recordkeeping.....	8
ARTICLE III. Procedures Applicable to All Reports of Sexual Misconduct.....	9
3.01 Reports of Sexual Misconduct and Initial Assessment.....	9
3.02 Consolidation of Proceedings	9
3.03 Initial Information for Complainant.....	9
3.04 Supportive Measures.....	9
3.05 Formal Complaints	10
3.06 When a Complainant Does Not Wish to Proceed.....	10

3.07	Notice to the Parties Upon Receipt of Formal Complaint.....	10
3.08	Emergency Removal.....	11
3.09	Notification of Law Enforcement.....	11
3.10	Investigations and Interviews.....	12
3.11	Draft Investigation Report.....	12
3.12	Technical Dismissal for Purposes of Title IX.....	13
3.13	Permanent Dismissal.....	13
3.14	Determination of Which Hearing Procedures Apply / Institutional Discretion.....	13
ARTICLE IV. Hearing Procedures for Title IX Offenses..... 14		
4.01	Access to Gathered Evidence.....	14
4.02	Finalization of the Investigation Report.....	14
4.03	Appointment of Panel.....	14
4.04	Notice of the Hearing.....	15
4.05	Separate Rooms and Virtual Participation.....	15
4.06	Responsibilities of the Panel and the Chair.....	15
4.07	Role of Advisors in Hearing.....	15
4.08	Record of Hearing.....	15
4.09	Confidentiality of Hearings.....	16
4.10	Types of Evidence Excluded.....	16
4.11	Access to Evidence and Investigation Report during Hearing.....	16
4.12	Testimony at Hearing / Refusal to Submit to Cross-Examination.....	16
4.13	Order of Hearing.....	17
4.14	Panel Deliberations.....	17
4.15	Panel Determination and Notice.....	17
ARTICLE V. Hearing Procedures for Non-Title IX Sexual Misconduct..... 18		
5.01	Non-Title IX Sexual Misconduct Involving Faculty or Staff Respondents.....	18
5.02	Non-Title IX Sexual Misconduct Involving Student Respondents.....	18
5.03	Finalization of the Investigation Report and Credible Evidence Determination.....	18
5.04	Meetings with Respondent and Complainant.....	18
5.05	Appointment of Panel.....	19
5.06	Notice of Hearing.....	19
5.07	Separate Rooms and Virtual Participation.....	19
5.08	Record of Hearing.....	19
5.09	Confidentiality of Hearings.....	19
5.10	Role of Advisors During Hearing.....	20
5.11	Failure of Respondent to Appear.....	20
5.12	Responsibilities of the Panel and the Chair.....	20
5.13	Presentation of Evidence.....	20
5.14	Panel Deliberations.....	21
5.15	Panel Determination and Notice.....	21
ARTICLE VI. Informal Resolution..... 21		
6.01	Availability of Informal Resolution.....	21
6.02	Timing of Informal Resolution.....	22
6.03	Right to Withdraw Prior to Final Resolution.....	22
6.04	Mechanism A: Respondent Acceptance of Responsibility.....	22

6.05	Mechanism B: Negotiated Resolution.....	22
ARTICLE VII. Appeal.....		
7.01	What Decisions Are Appealable	23
7.02	Who May Appeal.....	23
7.03	Bases for Appeal.....	23
7.04	Content and Timing of Appeal.....	23
7.05	Access to Record.....	23
7.06	Stay of Sanctions	23
7.07	Notice to Non-Appealing Party / Opportunity to Respond.....	24
7.08	Appellate Panel.....	24
7.09	Appellate Panel Review and Decision.....	24
7.10	Decision of Appellate Panel / Notice to Parties.....	24
7.11	Final Appeal of Appellate Panel Decisions Resulting in Suspension or Expulsion of a Student Respondent.....	24

ARTICLE I. Introduction and Terminology

1.01 Notice of Nondiscrimination and Background

Presbyterian College (the “College”)¹ does not unlawfully discriminate on the basis age, sex, race, creed, color, disability, ethnicity, national origin, sexual orientation, or any other protected category in admission, operation, or access to or employment in its program or activities.

To ensure conformity with federal law prohibiting discrimination on the basis of sex, including Title IX of the Educational Amendments of 1972 (“Title IX”) and its implementing regulations at 34 CFR § 106, the College has established this Sexual Misconduct Policy to address all forms of Sexual Misconduct as defined below, including sexual harassment, sexual stalking, sexual assault, and other forms of conduct that include sexual discrimination or violence as a substantial element.

1.02 Title IX Coordinator

The College’s Vice President of Human Resources and Title IX Coordinator (the “Title IX Coordinator”) oversees the administration of this Policy and coordinates the College’s compliance with Title IX. The Title IX Coordinator’s contact information is:

Barbara Fayad, Vice President for Human Resources and Title IX
Smith Administration Building
503 South Broad Street
Clinton, SC 29325
864-938-3722
bfayad@presby.edu

1.03 Reporting Sexual Misconduct

Individuals who believe they have experienced, witnessed, or learned of Sexual Misconduct, including sex discrimination, harassment, and/or retaliation in violation of this Policy, and who wish to report an incident of Sexual Misconduct, should contact the Title IX Coordinator. Reports may be made in person, by mail, by telephone, or by e-mail using the contact information above. A report may be made to the Title IX Coordinator at any time, including during non-business hours, by mail, telephone, or e-mail.

1.04 Confidential Support and Resources

A student or employee may discuss an incident involving alleged Sexual Misconduct with any of the following College employees who are deemed Confidential Employees or with an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergyperson, etc.) without concern that his or her identity will be reported to the Title IX Coordinator.

- PC Counselors (Counseling Services may be reached at 864-833-8263)
- PC Chaplains

¹ For purposes of this Policy, the College includes all academic and graduate programs of Presbyterian College, including the College of Arts and Sciences, Presbyterian College School of Pharmacy, and the Physician Assistant Program.

1.05 Inquiries Concerning this Policy and College Compliance

Questions regarding Title IX, including its application and/or concerns about noncompliance by the College should be directed to the Title IX Coordinator or to the Office for Civil Rights at the United States Department of Justice at the Address below:

Assistant Secretary for Civil Rights
Office for Civil Rights, National Headquarters
U.S. Department of Education
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
Fax: 202-453-6012; *TDD:* 800-877-8339
Email: OCR@ed.gov

1.06 Applicability of this Policy

This Policy applies to any allegation of Sexual Misconduct, if the conduct giving rise to the allegation is related to the College's academic, educational, athletic, extracurricular, internship, or practicum programs or activities. Subject to the foregoing, the Policy applies (i) to allegations made by or against a student, an employee of the College, or a third party; (ii) regardless of the sex, sexual orientation, sexual identity, gender expression, or gender identity of any party to the alleged conduct; and (iii) regardless of where the alleged Sexual Misconduct occurred.

1.07 Sexual Misconduct Board

Hearings under this Policy shall be conducted by members of the Sexual Misconduct Board ("SMB"). The SMB consists of seven persons, each of whom is either an employee of the College or a non-employee who is licensed and in good standing to practice law in the State of South Carolina.

The Title IX Coordinator appoints the members of the SMB, each of whom is normally expected to serve for three years but may serve a longer term at the discretion of the Title IX Coordinator. The Title IX Coordinator may remove a member of the SMB at any time and for any reason or no reason.

1.08 Definitions

"Advisor" means a person who advises a Party during the Sexual Misconduct process and performs such other roles as are specified in this Policy. An Advisor may be, but is not required to be, an attorney. An Advisor may also be a family member of the Party, or a coach, faculty member, or other member of the PC community.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct.

“Consent” is the knowing and voluntary agreement to engage in a particular sexual activity. Consent may be expressed through words or conduct.

In the case of a dispute over whether consent was given, the words and acts in question are to be evaluated in light of the totality of the circumstances as they would be understood and perceived by reasonable persons, with characteristics of the parties in question, under similar circumstances. This includes consideration of any past pattern between the parties.

Consent is not effective if it results from: (a) coercion (including intimidation or the threat or use of force); (b) temporary or ongoing incapacity (including either physical or legal incapacity); (c) deception; or (d) any other circumstance that would prevent or deter the consenting party from voluntarily choosing whether or not to engage in sexual activity.

While consent may be expressed by conduct, consent must be clear and must apply to the specific act in question. Consent will not be inferred from any of the following standing alone: (i) Silence or lack of resistance; (ii) A current or previous dating or sexual relationship; (iii) Consent to sexual conduct other than the act in question; (iv) Consent to sexual conduct at a different time; (v) Consent to sexual conduct with a different person; (vi) Attire or flirtatious or provocative comments or conduct; (vii) Agreeing to go on a date and/or accepting gifts, meals, or entertainment.

Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent to particular sexual activity is withdrawn, that sexual activity should cease as promptly as is reasonably practicable.

“Formal Complaint” has the definition set forth in § 3.05.

“Parties” refers to the Complainant and Respondent under this Policy.

“Reasonable Person” means a reasonable person under similar circumstances and with relevant characteristics similar to those of the person in question.

“Respondent” means an individual who has been reported to have engaged in conduct that could constitute Sexual Misconduct.

“Sexual Exploitation” means any act of taking non-Consensual or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

1. Causing or attempting to cause another person to be Temporarily Incapacitated in order to subject such person to conduct of a sexual nature to which the person has not consented;
2. Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of images of private sexual activity or a person’s intimate parts (including genitalia, groin, breast or buttocks) without Consent via media such as, but not limited to, the Internet, social media, or email;
3. Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);

4. Voyeurism, including non-consensual observation of private sexual activity or a person's intimate parts; or
5. Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.

“Sexual Intimidation” includes but is not limited to (i) threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent, and (ii) engaging in indecent exposure (intentionally exposing one's sexual organs with the intention of alarming, distressing, and/or offending others).

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

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct that would be deemed by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (including conduct that constitutes Sexual Exploitation or Sexual Intimidation if such conduct reaches this level); or
3. Sexual Assault, defined as
 - a. Any sexual act upon another person, without the Consent of that person, including instances in which that person is incapable of giving Consent.
 - b. Incest or Statutory Rape under applicable law.
4. Dating Violence, defined as
 - a. Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the victim and includes but is not limited to sexual or physical abuse or the threat of such abuse.
5. Domestic Violence, defined as
 - a. Violence on the basis sex committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of South Carolina; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of South Carolina.
6. Stalking, defined as
 - a. engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a Reasonable Person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
 - b. For the purposes of this definition—
 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils,

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

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

"Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct includes but is not limited to (i) Sexual Harassment, (ii) Sexual Exploitation, and (iii) Sexual Intimidation.

"Supportive Measures" has the definition set forth in § 3.04.

"Temporarily Incapacitated" means lacking, for a period of time, the physical and/or mental ability to make informed, rational judgments or to communicate clearly. A person may be Temporarily Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, or having consumed alcohol or taken drugs.

"Title IX Coordinator" refers to that individual identified in § 1.02 or his/her designee.

"Title IX Offenses" means allegations of Sexual Harassment (i) against a Complainant in the United States (ii) who is a student or employee or seeking to be a student or employee of the College, (iii) that occurs in locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and includes any building owned or controlled by a student organization officially recognized by the College.

1.09 Standard of Proof

The standard of proof for all determinations under this Policy, including determinations of a Respondent's responsibility for a violation of this Policy, will be a preponderance of the evidence. In other words, a finding of responsibility shall be made only if it is more likely than not that the Respondent violated the Policy.

1.10 Sanctions and Remedies

Sanctions and remedies that may be imposed under this policy, following a determination of responsibility, include the following.

For student Respondents:

- Educational Training
- No classes or extra-curricular activities shared with Complainant
- Disciplinary probation
- Withholding of grades, official transcript, or degree

- Removal from one or more classes; involuntary withdrawal from the College; bar against readmission bar against enrollment (in the case of an applicant)
- Suspension of rights and privileges, including but not limited to participation in athletic or extra-curricular activities
- Denial of degree
- Suspension from the College for a period of time.
- Expulsion (permanent separation from the College).
- Revocation of degree and withdrawal of diploma
- Other sanctions or remedies as deemed appropriate under the circumstances

For employee Respondents:

- Employment probation;
- Job demotion or reassignment
- Suspension with or without pay for a specific period of time
- Dismissal or termination
- Ineligibility for rehiring
- Other sanctions or remedies as deemed appropriate under the circumstances

ARTICLE II. Statements of Policy

2.01 Prohibition on Sexual Misconduct

The College prohibits Sexual Misconduct. The College strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases, in conformity with all applicable law and regulations. To that end the College has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the College will properly address all allegations of Sexual Misconduct.

However, not all unwelcome conduct of a sexual nature requires the types of procedures set forth in Articles IV and V of this Policy. Accordingly, as set out below, while the College will address all allegations of Sexual Misconduct pursuant to the procedures in Article III, only those acts that qualify as Title IX Offenses will be resolved and disciplined pursuant to the procedures under Article IV, and only certain other acts of Sexual Misconduct will be resolved and disciplined pursuant to the procedures in Article V.

2.02 Prohibition on Retaliation

The College and each and every member of the College's community are prohibited from retaliating against any person for engaging in protected activity under this Policy.

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the grievance process, supporting a Complainant or Respondent, providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Retaliation includes taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for engaging or considering engaging in protected activity.

Bad faith accusations against a Complainant or witness of code of conduct violations constitute retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may have been subjected to retaliation.

2.03 Prohibition on Providing False Information or Interfering with an Investigation

Any individual who knowingly files a false report under this Policy or who interferes with or provides false statements or information during an investigation under this Policy may be subject to disciplinary action.

2.04 Amnesty

The College considers the reporting and resolution of Sexual Misconduct cases to be of paramount importance. The College does not condone underage drinking or use of illegal drugs, but the College will extend amnesty to Complainants, third parties who report Sexual Misconduct, witnesses, and those assisting a potential victim of Sexual Misconduct from punitive sanctioning for illegal use of drugs and/or alcohol when evidence of such use is discovered in the course of a Sexual Misconduct report or investigation or while individuals are assisting a potential victim. Similarly, the College may, in its discretion, provide amnesty for other minor conduct code violations that are discovered in the course of Sexual Misconduct report or investigation.

2.05 Confidentiality and Privacy

From the time a report is made, the College will make all reasonable efforts to maintain the confidentiality and privacy of the parties involved in a report of Sexual Misconduct and any witness, and will not disclose any information except as permitted under the Family Educational Rights and Privacy Act, or as required by law, or to carry out the purposes of Title IX, including the conducting of any investigation, hearing or grievance procedure arising under this Policy.

Typically, only a small group of College officials who need to know about a report of Sexual Misconduct will be informed of the details of an investigation. In addition, information will be shared only as necessary with investigators, SMB members, witnesses, and the Parties.

2.06 Prompt Resolution

The College is committed to resolving allegations of Sexual Misconduct promptly, once it has received notice or a Formal Complaint. Complaints can typically take 90-120 days to resolve, including any appeals. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid undue delays within its control.

Any time the general timeframes for resolution outlined in this Policy will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay. Delays may arise for numerous reasons, including but not limited to considerations such as the absence of a Party, a Party's Advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. Delay shall not in and of itself be a basis to dismiss claims of a violation.

2.07 Presumption that Respondent is Not Responsible

A Respondent will be presumed to be not responsible for the alleged Sexual Misconduct until a determination regarding responsibility is made at the conclusion of the processes set forth in this Policy.

2.08 Impartiality and Conflicts of Interest

The Title IX Coordinator and all persons involved in administering the procedures under this Policy (including any investigators and members of the SMB) are to act with independence and authority free from bias and conflicts of interest. To raise any concern regarding bias or a potential conflict of interest concerning the Title IX Coordinator, a report should be made to the Provost of the College.

Reports of bias or a potential conflict of interest regarding anyone else involved in administering the procedures under this Policy should be made to the Title IX Coordinator promptly and are deemed waived if not raised within 24 hours following notice to the Parties of the identity of the person(s) involved. Because the College is a small and close-knit community, the fact that a person involved in administering the Policy knows a party or witness does not, by itself, normally constitute a conflict of interest.

2.09 Training

The Title IX Coordinator, any deputy coordinators, investigators, and the SMB receive periodic training concerning the definitions under this policy (including the definitions of Sexual Misconduct and Title IX Offense), how to conduct the investigation and grievance process, and College policies related to Sexual Misconduct. All training materials used to train these personnel will be posted on the College's Title IX and Sexual Misconduct webpage.

2.10 Recordkeeping

The College (through the appropriate office) will retain for seven years the following documents generated pursuant to this Policy:

- (1) Any Investigation Report, determination regarding responsibility, and any audio or audiovisual or transcript recording of a hearing;
- (2) Any disciplinary sanctions imposed on the Respondent or remedies provided to the Complainant;
- (3) Any appeal and the determination thereof;
- (4) Any Informal Resolution and the result thereof;
- (5) Any materials used to train personnel pursuant to § 2.09;

- (6) Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment.

ARTICLE III. Procedures Applicable to All Reports of Sexual Misconduct

3.01 Reports of Sexual Misconduct and Initial Assessment

Reports of Sexual Misconduct should be made to the Title IX Coordinator. The Title IX Coordinator shall make the determination of whether a report involves a charge or allegation of Sexual Misconduct. If so, it will be handled under the procedures in this policy. Otherwise, for matters involving student misconduct, the matter will be handled according to the normal procedures for student misconduct as set forth in the *Garnet Book*, or for matters involving faculty or staff misconduct, the matter will be handled according to the procedures in the applicable faculty or staff handbook.

If a report involves an allegation of Sexual Misconduct by the Title IX Coordinator, the report shall be made to Provost of the College, who shall perform the function of Title IX Coordinator for as long as allegations concerning the Title IX Coordinator are being considered.

3.02 Consolidation of Proceedings

Where a report (or Formal Complaint) involves both Sexual Misconduct and allegations of non-sexual misconduct, the Title IX Coordinator retains discretion to handle the entire matter pursuant to these procedures, if fairness, efficiency, or accuracy would be best served.

In addition, the College may consolidate Formal Complaints as to allegations against more than one Respondent, or by more than one Complainant against one or more Respondents, where the allegations of Sexual Misconduct arise out of the same facts and circumstances, and where fairness, efficiency, or accuracy would be best served.

3.03 Initial Information for Complainant

If a report involves a charge or allegation of Sexual Misconduct, the Title IX Coordinator shall promptly contact the Complainant to:

- Discuss the availability of Supportive Measures as set forth in 3.04;
- Consider the Complainant's wishes with respect to Supportive Measures;
- Inform the Complainant of the availability of Supportive Measures with or without filing a Formal Complaint; and
- Explain the process for filing a Formal Complaint

3.04 Supportive Measures

The College offers and implements appropriate and reasonable Supportive Measures to the Parties upon notice of alleged Sexual Misconduct.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The College will maintain the privacy of the Supportive Measures, provided that privacy does not impair the College's ability to provide the Supportive Measures. The College acts to ensure as minimal an academic/occupational impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

Supportive Measures may include

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Altering campus housing assignments
- Extensions of deadlines or other course-related adjustments
- Modification of work or class schedules
- Mutual restrictions on contact between the parties (no-contact orders)
- Any other non-punitive actions deemed appropriate by the Title IX Coordinator

If no Supportive Measures are provided to a Complainant, the College will document the reasons why the College's response was not clearly unreasonable in light of the known circumstances.

3.05 Formal Complaints

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the College investigate the allegation of Sexual Misconduct. Formal Complaints may be filed with the Title IX Coordinator in person, by mail, or by e-mail, using the contact information set forth in 1.02.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a party; the alleged victim remains the Complainant.

3.06 When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for his/her name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, he/she may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a Sexual Misconduct investigation.

3.07 Notice to the Parties Upon Receipt of Formal Complaint

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to each of the Parties that contains the following:

- A copy of or link to this Policy;
- Notice of the allegations of Sexual Misconduct with sufficient detail known at the time so as to allow the Party to prepare a response before any initial interview, including the identity of the party or parties involved, the conduct constituting Sexual Misconduct, and the date and location of the alleged incident(s), if known;
- A statement that the Respondent is presumed not responsible, as set forth in § 2.07;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney, and who may be present for all meetings, interviews, and hearings and participate in ways consistent with this Policy, and who may inspect and review evidence related to the allegations;
- A reminder that § 2.02 forbids retaliation against anyone for engaging in protected activity under this policy;
- A reminder that § 2.03 forbids filing false statements or information under this Policy;
- Information concerning the availability of Supportive Measures pursuant to § 3.04;
- Information concerning the Informal Resolution process in Article VI; and
- An offer to meet with the Parties to address any questions concerning this Policy or the issues addressed in the Notice.

When the College determines to investigate additional allegations not included in the initial notice, a new notice of the additional allegations will be provided to the Parties.

3.08 Emergency Removal

The College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator, in consultation with the Associate Dean of Students/Director of Residence Life when undergraduate student respondents are involved or the Dean of applicable graduate program (or his/her designee) when graduate student respondents are involved.

In all cases in which an emergency removal is imposed, the student Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

Where the Respondent is an employee, the Title IX Coordinator shall determine whether to place the employee on administrative leave in consultation with the employee's supervisory vice president.

3.09 Notification of Law Enforcement

The Title IX Coordinator shall determine whether local law enforcement or other authorities should be notified of the allegations of a Formal Complaint or other report of Sexual Misconduct.

3.10 Investigations and Interviews

The Title IX Coordinator will ensure that all Formal Complaints of Sexual Misconduct are investigated in a thorough and appropriate manner. Investigations normally are concluded within 90 days of the filing of a Formal Complaint. The Parties should be provided periodic updates on the progress of the investigation, as needed.

The Title IX Coordinator or his/her designee(s) shall serve as Investigator(s). The Title IX Coordinator shall inform the Parties of the identity of the Investigator(s) and indicate that any concerns about bias of an Investigator should be raised within 24 hours. *See* § 2.08. The Investigators act as neutral and impartial fact-finders and gather evidence during the investigation.

The Investigator shall interview the Complainant, Respondent, and any witnesses, and gather any pertinent evidentiary materials.

The Parties have the same rights to identify witnesses, including both fact and expert witnesses, and inculpatory and exculpatory evidence during the Investigation.

The Parties shall be entitled to have an Advisor present for all interviews, but the Advisor has no speaking role or authority during the interview, and may not interfere in the interview. The Advisor may consult with the party during breaks in the interview.

The Investigator will undertake reasonable efforts to identify a time for interviews with a Party that are acceptable to the Party and his/her Advisor. In any event, notice of the date, time, and location of interviews will be provided at least 24 hours in advance to the Party being interviewed.

Interviews may be conducted remotely.

Interviews are typically recorded and a transcript is made of the recording by a transcription service. The completed transcript is then sent to the party or witness, who reviews the transcript and certifies its accuracy. At the discretion of the Investigator, he/she may make notes of interviews in lieu of recording and compile a summary of the interview. In this case the completed summary is sent to the party or witness, who reviews the summary and certifies its accuracy.

3.11 Draft Investigation Report

At the conclusion of the Investigation, the Investigator compiles a draft Investigation Report that contains the following:

- A description of the procedural steps taken under this Policy
- A summary of the relevant evidence gathered
- Copies of transcripts (or summaries) of all interviews
- Copies of all documentary or other evidence

3.12 Technical Dismissal for Purposes of Title IX

Under Title IX regulations, the College is required to distinguish between Sexual Misconduct that is “under Title IX” (that is, misconduct that would constitute a Title IX Offense under this Policy) and other Sexual Misconduct that is a violation of College policy. Consequently, if at any time following receipt of a Formal Complaint the Title IX Coordinator determines that an allegation of Sexual Misconduct would not amount to a Title IX Offense even if proved, the Title IX Coordinator shall dismiss the complaint for purposes of Title IX. This technical dismissal does not bring the proceedings to an end; it only clarifies that the misconduct alleged does not fall under the Title IX regulations and that the grievance process will not proceed under those procedures set forth in Article IV (unless the Title IX Coordinator determines otherwise pursuant to § 3.14).

Notice to the Parties of a technical dismissal for purposes of Title IX will explain

- the reasons for the Title IX Coordinator’s decision;
- that the procedures in Article IV are not applicable (unless the Title IX Coordinator determines otherwise pursuant to § 3.14); and
- that the Formal Complaint will continue according to the procedures in Article V

3.13 Permanent Dismissal

The College may (but is not required to) permanently dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in 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 therein.

Notwithstanding circumstances constituting (1) or (2) above, the College may determine to proceed with a Formal Complaint if the College determines in its sole discretion that doing so is appropriate or necessary to carry out the purposes of this Policy.

Upon any permanent dismissal, the Recipient will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal in Article VII.

3.14 Determination of Which Hearing Procedures Apply / Institutional Discretion

Before a Formal Complaint proceeds to a hearing, the Title IX Coordinator shall determine whether the matter involves a Title IX Offense or not. If it does involve a Title IX Offense, the matter shall proceed using the hearing process outlined in Article IV. If it does not involve a Title IX Offense, the Title IX Coordinator shall dismiss the Complaint for purposes of Title IX according to the procedures in § 3.12 and the matter shall proceed using the hearing process outlined in Article V.

The Title IX Coordinator retains discretion (i) to process a Sexual Misconduct matter that is not a Title IX Offense pursuant to the procedures in Article IV, and (ii) to consolidate a matter that involves both a Title IX Offense and Sexual Misconduct that is not a Title IX Offense and process it under the procedures in Article IV if, in either case, fairness, efficiency, or accuracy would be best served.

ARTICLE IV. Hearing Procedures for Title IX Offenses

The procedures in this Article are applicable ONLY for alleged Sexual Misconduct that is determined to be a Title IX Offense, subject to a decision by the Title IX Coordinator to apply this Article to other Sexual Misconduct pursuant to § 3.14.

4.01 Access to Gathered Evidence

If the matter has not been previously resolved the Title IX Coordinator shall provide, at the same time, access to all Parties (and their Advisors, if the Party has submitted a signed information release for the Advisor) to all the evidence obtained in the investigation that directly relates to the allegations (including any evidence the College does not intend to rely on at the hearing).

Each Party will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the Title IX Coordinator, who will make the responses available to the Investigator. The Investigator will include the responses in the final Investigation Report.

4.02 Finalization of the Investigation Report

Upon receipt of the Parties' responses to the evidence under § 4.01, the Investigator(s) shall consider the responses, finalize the Investigation Report, and provide a copy of the Report to the Title IX Coordinator. The Title IX Coordinator will make the completed Report available to the Parties (and their Advisors, if the Party has submitted a signed information release for the Advisor) at the same time at least 10 days prior to the hearing.

4.03 Appointment of Panel

Upon the determination that a hearing will be required to resolve the matter, the Title IX Coordinator shall appoint a three-member hearing panel (the "Panel") from the members of the SMB. Those three members will be identified to the Parties in advance of the hearing and shall be responsible for hearing and deciding the matter.

Upon notice to the Parties of the identity of the Panel members, either Party should notify the Title IX Coordinator within 24 hours of any concerns about bias or a conflict of interest with a Panel member. The Title IX Coordinator has the discretion to decide whether to remove the challenged Panel member and replace him/her with another member of the SMB. The Title IX Coordinator shall remove a Panel member if there is a substantial risk of bias or the appearance of bias.

4.04 Notice of the Hearing

The College will provide at least 10 days written notice of the hearing to participants (and any Advisors, upon receiving a Party's signed information release). The notice will include:

- (1) The date, time and location of the of the hearing;
- (2) The names of all participants in the hearing, including parties, advisors, the Panel, and witnesses;
- (3) The alleged violations; and
- (4) A reminder that the hearing will proceed according to the process in this Article IV.

4.05 Separate Rooms and Virtual Participation

At the request of either Party, the College will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Panel and the Parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually.

4.06 Responsibilities of the Panel and the Chair

The members of the Panel have the right to question the Parties and any and all witnesses, will deliberate to determine responsibility, and will determine appropriate sanctions. The Panel is entitled to have the advice and assistance of outside general counsel for the College at any point during these proceedings, including during a pause in deliberations.

The Panel will select one of its members as Chair. The Chair, in consultation as necessary with the other members of the Panel, oversees the hearing, makes certain the process is followed, maintains order, and rules on all objections regarding exhibits and testimony of participants at the hearing. The Chair shall interpret and apply these rules in the interests of truth, justice, order, and the College's overarching goals of education and character building. The Chair will have a vote.

4.07 Role of Advisors in Hearing

Each Party may have an advisor at the hearing. Advisors are not permitted to actively participate in the hearing except for asking questions of the other Party and any witnesses. If a Party does not have an Advisor, the College will appoint one for the Party, without fee or charge. The appointed Advisor may be, but is not required to be, an attorney.

4.08 Record of Hearing

The College will record the hearing in audio or audiovisual format and may, at its discretion, transcribe the recording. The recording and any transcript will be available for the Parties to review, upon request.

No one else at the hearing is entitled to make a record of the hearing.

4.09 Confidentiality of Hearings

Hearings are closed except to the members of the Panel, the Parties, any Advisors, and the Title IX Coordinator. Witnesses are admitted to the hearing singly, only to give testimony and submit to questions from the Panel and Advisors. After such testimony each witness is excused. Witnesses are required to maintain confidentiality concerning the proceedings.

4.10 Types of Evidence Excluded

The following types of evidence are excluded and may not be relied upon for a determination of responsibility:

- (1) Privileged information: No person will be required to disclose information protected under a legally recognized privilege. The Panel must not allow into evidence or rely upon any testimony or evidence that contains or discloses such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- (2) Complainant's prior sexual history or disposition: Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant *unless* such questions and evidence are offered to prove that someone other than the Respondent committed the conduct in question or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent to the alleged conduct.
- (3) A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's 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, unless the Party provides voluntary, written consent to the use of such evidence.

4.11 Access to Evidence and Investigation Report during Hearing

Each party will have access to all of the evidence from the investigation, including a copy of the completed Investigation Report, as outlined in § 4.02 in this Policy.

4.12 Testimony at Hearing / Refusal to Submit to Cross-Examination

At the discretion of the Chair, the Panel may ask the first questions during the testimony of any Party or witness. Each party's Advisor will have an opportunity to ask relevant questions and follow-up questions of the other Party and of any witnesses that participate in the hearing, including questions that challenge credibility.

Each Advisor may ask questions directly, orally, and in real time at the hearing. The Parties will not be permitted to personally ask questions of the other Party or any witnesses that participate in the hearing. The Advisors may ask questions under the following procedure:

- (1) The Advisor will ask a question of the applicable participant
- (2) Before the participant answers the question, the Chair will rule as to whether the Advisor's question is relevant to the alleged conduct charges

- (3) If the Chair rules the Advisor's question as not relevant, the Chair must explain his/her decision to exclude the question. If the Chair permits the question, the participant will answer.

If a Party or witness refuses to submit to any cross-examination questions during the hearing, the Panel will not rely on any statement of that Party or witness when reaching a responsibility determination. The Panel may not, however, draw an inference concerning the Respondent's responsibility for misconduct based solely on a Party or witness's absence from the hearing or refusal to answer questions.

4.13 Order of Hearing

The Panel has final discretion on how best to organize the hearing, but as a general matter, the hearing proceeds as follows:

- (1) Opening statements from the Parties
- (2) Presentation by the Title IX Coordinator of a summary of the evidence gathered in the Final Investigation Report, followed by questions to Title IX Coordinator from Panel and Parties' Advisors
- (3) Complainant's testimony and presentation of evidence and witnesses, with questions from the Panel and Respondent's Advisor following
- (4) Respondent's testimony and presentation of evidence and witnesses, with questions from the Panel and Complainant's Advisor following
- (5) Closing statements from the Parties

4.14 Panel Deliberations

Following the hearing the Panel will go into closed deliberations to determine whether the Respondent is responsible for the Sexual Misconduct. The determination shall be made according to a preponderance of the evidence. *See* §1.09.

If the Panel determines Respondent is responsible, the Panel will consider the information presented in the hearing to determine the appropriate sanctions.

No record is made of Panel deliberations, and the vote of individual Panel members will not be recorded. A majority vote of the Panel (two votes out of three) will be required for a finding of responsibility and for the imposition of sanctions.

4.15 Panel Determination and Notice

The Panel shall issue a written Determination that includes the following:

- (1) Identification of the allegations potentially constituting Sexual Harassment, along with any other alleged misconduct being resolved in the proceeding;
- (2) A description of the procedural steps taken from receipt of the Formal Complaint through the determination, including all notifications to the Parties, interviews with the Parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- (3) Findings of fact supporting the determination;

- (4) Conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
- (5) The disciplinary sanctions, if applicable (*see* § 1.10)
- (6) The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
- (7) The College's procedures and permissible bases for the Parties to appeal.

Normally, the Panel should endeavor to issue its written Determination within 7 calendar days of the end of the hearing. The Chair will send the Determination to the Title IX Coordinator, who will provide it to both Parties simultaneously. Either Party may then appeal pursuant to the procedures in Article VII.

ARTICLE V. Hearing Procedures for Non-Title IX Sexual Misconduct

The procedures in this Article are applicable ONLY for alleged Sexual Misconduct that is not a Title IX Offense.

5.01 Non-Title IX Sexual Misconduct Involving Faculty or Staff Respondents

Allegations of Sexual Misconduct that would not constitute a Title IX Offense and that involve a faculty or staff member Respondent are to be resolved according to the procedures for addressing misconduct in the applicable faculty or staff handbook, and are not handled under this Article V.

5.02 Non-Title IX Sexual Misconduct Involving Student Respondents

Allegations of Sexual Misconduct that would not constitute a Title IX Offense and that involve a student Respondent are handled according to the procedures of this Article V.

5.03 Finalization of the Investigation Report and Credible Evidence Determination

The Title IX Coordinator shall review the report compiled under § 3.11 and finalize the same.

Upon review of the Investigation Report, the Title IX Coordinator shall determine whether some credible evidence of Sexual Misconduct exists. If it does, the matter will proceed as outlined in these procedures. If not, the matter will be concluded as to the Respondent and the Formal Complaint dismissed, but the Title IX Coordinator may still consider whether other forms of remedial or community-based steps are appropriate to educate the Respondent or reduce the risk of future Sexual Misconduct. Neither Party has a right to appeal the Title IX Coordinator's determination of whether credible evidence exists.

5.04 Meetings with Respondent and Complainant

Once the Title IX Coordinator determines that credible evidence of Sexual Misconduct exists, the Associate Dean of Students or his/her designee (hereafter "the Associate Dean") will meet individually one or more times with the Parties to discuss (i) the Investigation Report; (ii) the charges brought against the Respondent, (iii) an overview of the hearing process, and (iv) whether the Parties would be interested in pursuing the Informal Resolution process outlined in Article VI.

During the meeting with Respondent or at another time determined by the Associate Dean, the Respondent will indicate his/her plea of “responsible” or “not responsible.”

5.05 Appointment of Panel

Upon the determination that a hearing will be required to resolve the matter, the Title IX Coordinator shall appoint a three-member hearing panel (the “Panel”) from the members of the SMB. Those three members will be identified to the Parties in advance of the hearing and shall be responsible for hearing and deciding the matter.

Upon notice to the Parties of the identity of the Panel members, either Party should notify the Title IX Coordinator within 24 hours of any concerns about bias or a conflict of interest with a Panel Member. The Title IX Coordinator has the discretion to decide whether to remove the challenged Panel member and replace him/her with another member of the SMB. The Title IX Coordinator shall remove a Panel member if there is a substantial risk of bias or the appearance of bias.

5.06 Notice of Hearing

The Associate Dean will provide written notice to the Parties of the hearing at least 48 hours prior to the hearing. The notice will include:

- (1) A statement of the alleged policy violation(s);
- (2) Access to the Investigation Report;
- (3) The date, time and location of the hearing; and
- (4) A reminder that the hearing will proceed according to the process in this Article V.

5.07 Separate Rooms and Virtual Participation

At the request of either Party, the College will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Panel and the Parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually.

5.08 Record of Hearing

The College will record the hearing in audio or audiovisual format and may, at its discretion, transcribe the recording. The recording and any transcript will be available for the Parties to review, upon request.

No one else at the hearing is entitled to make a record of the hearing.

5.09 Confidentiality of Hearings

Hearings are closed except to the members of the Panel, the Parties, any Advisors, the Associate Dean, any Investigators, and the Title IX Coordinator. Witnesses are admitted to the hearing singly, only to give testimony and submit to questions from the Panel. After such testimony each witness is excused. Witnesses are required to maintain confidentiality concerning the proceedings.

5.10 Role of Advisors During Hearing

The Advisor's role is limited to communicating directly with the student he/she is advising. The Advisor may not directly participate in the hearing or ask questions of a party, witnesses, or panel members.

5.11 Failure of Respondent to Appear

The Respondent shall appear either virtually or in-person before the Panel for the hearing. If the Respondent elects not to appear (including by withdrawing from the College) the Panel will proceed and make its decision in the absence of the Respondent, with the information available to it.

5.12 Responsibilities of the Panel and the Chair

The members of the Panel have the right to question the Parties and any and all witnesses, will deliberate to determine responsibility, and will determine appropriate sanctions. The Panel is entitled to have the advice and assistance of outside general counsel for the College at any point in these proceedings, including during a pause in deliberations.

The Panel will select one of its members as Chair. The Chair, in consultation as necessary with the other members of the Panel, oversees the hearing, makes certain the process is followed, maintains order, and rules on all objections regarding exhibits and testimony of participants at the hearing. The Chair shall interpret and apply these rules in the interests of truth, justice, order, and the College's overarching goals of education and character building. The Chair will have a vote.

5.13 Presentation of Evidence

- (1) The Associate Dean will serve as the representative for the College at the hearing. The Associate Dean or a faculty or staff member designated by the Associate Dean will present the case on behalf of the College in the interest of justice— that is, this presentation will not advocate for one party or the other, but will endeavor to present all pertinent evidence objectively.
- (2) After the presentation by the Associate Dean, the Complainant will have the opportunity to call and present witnesses, including himself/herself, and to present any other relevant materials the Panel may accept.
- (3) The Respondent will then have the opportunity to call and present witnesses, including himself/herself, and to present any other relevant materials that the Panel may accept.
- (4) The Respondent and the Complainant shall each have the opportunity to submit questions to the Panel Chair to be asked of each witness at the hearing. The Chair shall have discretion not to ask inappropriate questions. The members of the Panel may also question each witness.
- (5) The Respondent or the Complainant may decline to answer questions posed by the Panel. However, the Panel shall make its decision based on the information available at the hearing and may draw inferences from any refusal to respond.
- (6) Nothing in this policy shall be construed to provide access by any person to materials protected from disclosure by FERPA, such as the Respondent's prior disciplinary records, even if such materials are part of the case presented by the College.

- (7) The Respondent can normally have a maximum of five competent witnesses to give testimony related to the specific charges in a hearing to determine whether the Respondent is responsible for the alleged Sexual Misconduct. The Complainant will normally be allowed a like number of witnesses in each hearing. The Panel may allow additional witnesses if the interests of justice would be served by doing so.
- (8) The Respondent and Complainant must each submit the names of the witnesses he or she will call to the Associate Dean at least 24 hours prior to the hearing in question. The Associate Dean will promptly provide the names of witnesses to the other party.
- (9) The witnesses may appear in person before the Panel to testify. Written or tape recorded statements, rather than personal testimony by the witnesses, may be permitted at the Chair's discretion when extenuating circumstances prevent the witness from appearing, and where doing so will not result in injustice. Failure of a witness to be present at the time of the hearing, except in extenuating circumstances, will not be grounds to delay the hearing.

5.14 Panel Deliberations

Following the hearing, the Panel will go into closed deliberations to determine whether the Respondent is responsible for the Sexual Misconduct. The determination shall be made according to a preponderance of the evidence. *See* § 1.09.

If the Panel determines the Respondent is responsible, the Panel will consider the information presented in the hearing to determine the appropriate sanctions.

No record is made of Panel deliberations, and the vote of individual Panel members will not be recorded. A majority vote of the Panel (two votes out of three) will be required for a finding of responsibility and for the imposition of sanctions.

5.15 Panel Determination and Notice

The panel does not issue a written decision, beyond reporting its results in a written Determination. The Determination includes the Panel's determination of responsibility or non-responsibility and disciplinary sanctions, if applicable (*see* § 1.10). The Chair of the Panel ordinarily shall provide the Determination to the Associate Dean within 24 hours after beginning deliberations, absent circumstances making this impossible. The Associate Dean shall then provide the Determination to both Parties simultaneously, along with information on applicable appeal procedures. Either Party may then appeal pursuant to the procedures in Article VII.

ARTICLE VI. Informal Resolution

6.01 Availability of Informal Resolution

Informal Resolution pursuant to this Article is available to resolve all Formal Complaints of Sexual Misconduct if (1) the Title IX Coordinator determines that Informal Resolution is an appropriate mechanism for resolving the Complaint; (2) all Parties provide voluntary, written consent to participate in the Informal Resolution process; and (3) the allegation of Sexual Misconduct does not involve allegations that a College employee committed Sexual Harassment of a student.

As a general matter, Informal Resolution may not be used to resolve less than all the misconduct in a Formal Complaint, but the Title IX Coordinator retains discretion to make exceptions to this general rule.

6.02 Timing of Informal Resolution

Informal Resolution may occur at any time following the receipt of a Formal Complaint, including before an investigation or hearing. Efforts towards Informal Resolution pause the customary timeframe for resolving a Formal Complaint as set forth in § 2.06.

6.03 Right to Withdraw Prior to Final Resolution

At any time prior to agreeing to a resolution, either Party has the right to withdraw from the Informal Resolution process and to request that the Formal Complaint proceed under the applicable resolution procedures.

6.04 Mechanism A: Respondent Acceptance of Responsibility

The Respondent may accept responsibility for all of the alleged Sexual Misconduct at any point during the resolution process. If the Respondent indicates an intent to accept responsibility, the formal resolution process will typically be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in § 6.01.

If Informal Resolution is applicable, the Title IX Coordinator will propose sanctions, confer with the Parties, and determine whether all parties and the College are able to agree on responsibility, sanctions, and remedies. If so, the Title IX Coordinator accepts the finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies.

This result is not subject to appeal once all parties indicate their written assent to all agreed-upon terms of resolution.

6.05 Mechanism B: Negotiated Resolution

The Title IX Coordinator may, with the consent of the Parties, attempt to negotiate and implement an agreement to resolve the allegations that satisfies all Parties and the College.

The Title IX Coordinator may use formal mediation sessions, informal meetings, or any other reasonable method to effect a negotiated resolution.

The College must approve any final negotiated resolution. The result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of resolution.

ARTICLE VII. Appeal

7.01 What Decisions Are Appealable

The only determinations in this Policy which are appealable are findings of responsibility, non-responsibility, or sanctions pursuant to §§ 4.15 or 5.15, and determinations to dismiss a Formal Complaint pursuant to § 3.13.

7.02 Who May Appeal

Either Party may appeal an appealable decision.

7.03 Bases for Appeal

In order for an appeal to be reviewed by the Appellate Panel, the appeal must make some reasonable showing that at least one of the following criteria is present:

- (1) A substantive procedural error affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal of the Formal Complaint was made that could, if introduced, have affected the outcome of the matter;
- (3) The Title IX Coordinator, investigator(s), or decision makers rendering the decision had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;
- (4) The sanction rendered is significantly inconsistent with institutional guidelines or past practices; or
- (5) The totality of the evidence presented at the hearing does not support the decision.

If the Title IX Coordinator determines that the appeal does not meet one of the above criteria, he/she may dismiss the appeal.

7.04 Content and Timing of Appeal

An appeal must contain, in writing, detailed specifications of all bases under which the Party is appealing. Appeals must be received by the Title IX Coordinator no later than 48 hours (not counting weekends or holidays) after the Determination is received by the Party appealing.

7.05 Access to Record

During the period prior to the deadline for filing an appeal, the Parties will be provided reasonable access to the recording of the hearing and to all materials introduced at the hearing.

7.06 Stay of Sanctions

A timely appeal will have the effect of staying all sanctions pending resolution of the appeal. Accordingly, absent a determination by the Title IX Coordinator of extraordinary circumstances, in the event of a sanction of suspension, expulsion, or another sanction that would prevent a student

Respondent from completing or participating in academic work, the student Respondent shall be allowed to continue classes and clinical work during pendency of the appeal.

7.07 Notice to Non-Appealing Party / Opportunity to Respond

Upon receipt of an appeal and determination the appeal meets one of the bases in § 7.03, the Title IX Coordinator shall provide a copy of the Appeal to the non-appealing Party. The non-appealing Party (or the College) then has 48 hours (not counting weekends or holidays) to provide a written statement in support of, or challenging, the outcome.

7.08 Appellate Panel

Appeals (and any responses) are reviewed by a three-person Appellate Panel made up of members of the SMB who were not involved in the decision under review. Upon receipt of the written appeal under 7.04, the Title IX Coordinator shall appoint the Appellate Panel and so inform the Parties, who may object to bias of an appointed Appellate Panel member within 24 hours. *See* § 2.08.

7.09 Appellate Panel Review and Decision

An appeal is not a rehearing, and the Appellate Panel normally considers the appeal only on the written appeal, any written responses, and the record of the hearing but may, in its sole discretion, receive testimony in exceptional circumstances. The Appellate Panel will take one of the following four actions:

- (1) Affirm the decision of the Hearing Panel
- (2) Uphold the finding of responsibility but make changes to the sanctions
- (3) Overturn the decision of the Hearing Panel and find no violation
- (4) Remand the decision to the Hearing Panel for further appropriate proceedings (such as, for example, consideration of other appropriate evidence)

No record is made of Appellate Panel deliberations, and the vote of individual Appellate Panel members will not be recorded. A majority vote of the Appellate Panel (two votes out of three) will be required for any decision.

All decisions of the Appellate Panel are final except for those resulting in suspension or expulsion of a student Respondent.

7.10 Decision of Appellate Panel / Notice to Parties

The Appellate Panel normally decides an appeal within 21 days of receipt of any response to the appeal. The Appellate Panel provides a written decision announcing its decision and the rationale to the Title IX Coordinator, who provides the decision at the same time to both Parties.

7.11 Final Appeal of Appellate Panel Decisions Resulting in Suspension or Expulsion of a Student Respondent

If the Appellate Panel imposes or upholds a decision of suspension or expulsion of a student Respondent, the Respondent may appeal the Appellate Panel decision to the College President. To

initiate this final appeal, the Respondent must submit a written request to the College President within 48 hours (not counting weekends or holidays) of the receipt of the decision of the Appellate Panel. The only bases for such an appeal are as set forth in § 7.03. The non-appealing Party is again informed of the appeal and again has opportunity to respond within 48 hours. The College may also submit a response.

If the President determines the appeal does not meet one of the criteria for appeal contained in § 7.03, he/she may dismiss the appeal. Otherwise, the President will review the appeal on the written record alone and will not normally receive testimony, but may elect to do so in his/her sole discretion in exceptional circumstances. The President may (1) affirm the decision of the Appellate Panel; (2) Uphold the finding of responsibility of the Appellate Panel but make changes to the sanctions; (3) Overturn the decision and find no violation; or (4) Remand the decision to the Hearing Panel for further appropriate proceedings (such as, for example, consideration of other appropriate evidence).

The President will issue a written decision with his/her rationale, and the decision will made available to the Parties at the same time by the Title IX Coordinator.

All decisions of the College President are final.