

# Procedures for the Resolution of Reports Alleging Sexual Misconduct Falling Within the Scope of Title IX ("Title IX Procedures")

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These procedures establish a resolution process for certain complaints defined in the [Sexual Misconduct Policy](#) (SMP). Definitions in the SMP apply to terms used in these procedures.

## I. JURISDICTION AND SCOPE<sup>1</sup>

Under the United States [Department of Education’s Title IX Regulations](#), published May 19, 2020 (The Title IX Final Rule), the following procedures will apply **only** to a narrow category of complaints. Reports of Prohibited Conduct (as defined in the SMP) meeting the definitions and jurisdictional elements below will follow these Title IX Procedures. Those reports that do not meet the jurisdictional requirements of the new regulations will be handled through [The Procedures for the Resolution of Reports Alleging Sexual Misconduct Outside the Scope of Title IX \(Non-Title IX Procedures\)](#); this is not to suggest that any case is more or less important, but instead a reflection of federal regulations that apply only to a specifically identified set of cases.

This procedure applies to reports of Prohibited Conduct that meet the following criteria:

### A. Nature of Complaint

A complaint of conduct on the basis of sex that falls into one of the following categories:

1. a complaint of Dating Violence, Domestic Violence, Stalking, or Sexual Assault (as defined in the SMP);
2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access<sup>2</sup> to an education program or activity, including employment;<sup>3</sup> or
3. conduct by an employee conditioning the provision of an aid, benefit, or service of the college on the Complainant’s participation in unwelcome sexual conduct.

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<sup>1</sup> Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Procedures be revoked in this manner, any conduct covered under the Title IX Procedures shall be investigated and adjudicated under the Non-Title IX Procedures.

<sup>2</sup> Whether the Complainant has been deprived of “equal access” shall be measured by the Title IX Coordinator (TIXC) against the access of a person who has not been subject to the sexual harassment. Signs of enduring unequal access may include skipping class or work to avoid a harasser, having difficulty concentrating in class or on the job, or a decline in grades or performance. However, no concrete injury is required to show unequal access.

<sup>3</sup> The determination whether the alleged conduct meets this standard will be made by the TIXC, who will determine whether the alleged conduct was “unwelcome” based on whether the Complainant viewed the conduct as unwelcome, and whether the conduct, as alleged, is “severe, pervasive, and objectively offensive,” based on an objective reasonable person standard. The latter evaluation shall be made on a case-by-case basis, and will require the TIXC to evaluate the facts of each case, including the Complainant’s age, disability status, sex, and other characteristics.

## B. Location of Incident

1. The incident(s) occurred on Goucher's campus, within the United States;
2. the incident(s) occurred in a building under the college's control, such as a classroom outside of the college's main campus, and within the United States;
3. the incident(s) were part of one of the college's education programs or activities within the United States, including locations, events, or circumstances over which the college exercised substantial control over both the Respondent and the context in which the conduct occurred; or
4. the incident occurred through the use by an individual located in the United States of computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the college's programs and activities over which the college has substantial control.

## C. Identity of the Complainant

This procedure will apply to Complainants, who at the time of filing a Formal Complaint are participating in or attempting to participate in the education program or activity of the college, regardless when the incident occurred. This includes, but is not limited to, current students, (whether applicant, admitted, currently enrolled, or on leave of absence; includes alumni or former students attempting to participate in a college activity) and current employees (applicant, hired but not yet working, or employed).

## D. Identity of the Respondent

This procedure will apply to Respondents, who at the time of filing a Formal Complaint are participating in or attempting to participate in the education program or activity of the college, regardless when the incident occurred. This includes but is not limited to current students, (whether applicant, admitted, currently enrolled, or on leave of absence; includes alumni or former students attempting to participate in a college activity) and current employees (applicant, hired but not yet working, or employed).

## II. FORMAL COMPLAINTS

**Formal Complaint:** For the purposes of these Title IX Procedures, "Formal Complaint" means a document—including an electronic submission—filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging Prohibited Conduct against a Respondent about conduct within the college's education program or activity and requesting initiation of the procedures to investigate the allegations.

Complainants are only able to file a Formal Complaint under this policy if they meet the conditions of Section I.C above. For Complainants who do not meet these criteria, the college will utilize different processes, including the Student Code of Conduct or the Non-Title IX Procedures.

Similarly, the college will consider complaints under these procedures only if the Respondent meets the conditions of Section I.D above. Complaints against Respondents who do not meet these criteria will be processed under the Student Code of Conduct or the Non-Title IX Procedures.

To promote timely and effective review, the college strongly encourages Complainants and other persons with knowledge of possible violations of this policy to make reports as soon as possible. A delay in

reporting may affect the college's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the college's ability to take disciplinary action against a student or employee who has engaged in Prohibited Conduct.

If the Complainant and/or Respondent is no longer a student or employee at the time of the Formal Complaint and the college is, thus, unable to pursue resolution under these procedures, the college will seek to meet its Title IX obligations by providing support for the parties and, as feasible, taking appropriate steps to end any Prohibited Conduct, prevent its recurrence, and address its effects.

If the report falls within the jurisdiction of these procedures the Investigator will take the following actions:

#### A. Response Where the Complainant's Identity Is Known

Where the identity of the Complainant is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. (See, SMP, Supportive Measures, Section XVI.A.)

The Title IX Coordinator will also offer the Complainant supportive measures designed to restore or preserve equal access to the college's education programs or activities, and will consider the Complainant's wishes with respect to these measures.

#### B. Response Where the Complainant's Identity Is Unknown

Where a report is filed but the identity of the Complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Complainant, the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of Prohibited Conduct consistent with applicable federal and state laws and these procedures.

#### C. Response Where the Respondent's Identity Is Unknown

Where a report is filed but the identity of the Respondent is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of Prohibited Conduct consistent with applicable federal and state laws and these procedures.

#### D. The College's Actions Following an Initial Assessment With Known Complainant

##### **1. Where the Complainant seeks resolution under these procedures**

In any case where the Complainant reports Prohibited Conduct and requests resolution under these procedures, the Title IX Coordinator will promptly initiate an investigation. This process begins with the Complainant, or the Complainant's parent or guardian, making a signed, written Formal Complaint. A Formal Complaint must be filed with the Title IX Coordinator, and may be filed in person, by mail, or by electronic mail, addressed to the Title IX Coordinator.

## **2. Where the Complainant requests that no Formal Complaint be pursued under these procedures**

The college supports any complainant's decision not to pursue a Formal Complaint under these procedures.

Where the Complainant does not wish to pursue a Formal Complaint under these procedures, the college will honor the Complainant's wishes unless doing so would not adequately mitigate the risk of harm to the Complainant or other members of the college community or when doing so materially impacts the college's ability to provide a safe and non-discriminatory environment for all members of the college community, including the Complainant.

The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the Complainant's wish that no resolution be pursued under these procedures:

- i. Whether the Respondent has a history of violent behavior or is a repeat offender
- ii. Whether the incident represents escalation in unlawful conduct by the Respondent from previously noted behavior
- iii. The increased risk that the Respondent will commit additional acts of violence
- iv. Whether the Respondent used a weapon or force
- v. Whether the Complainant is a minor
- vi. Whether the college possesses other means to obtain evidence such as security footage
- vii. Whether available information reveals a pattern of perpetration at a given location or by a particular group

Regardless of whether the Complainant chooses to file or participate in a Formal Complaint, the Title IX Coordinator will assist the Complainant with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. (See, SMP, Supportive Measures, Section XVI.A.) Supportive measures provided to the Complainant may not unreasonably burden the Respondent.

Where no Formal Complaint has been filed and a requested supportive measure impacts the Respondent, the Title IX Coordinator will, with the Complainant's consent, provide Respondent with written notice of the report, which includes, as known, the date, time, and location of the alleged Prohibited Conduct and the underlying factual allegations, including the identity of the Complainant. Therefore, certain supportive measures may not be available if the Complainant wishes to maintain anonymity.

Where the Complainant declines to participate in an investigation, the college's ability to meaningfully investigate and respond to a report may be limited.

### **i. Where the college determines that the Complainant's request(s) can be honored**

Where the Title IX Coordinator determines that the college can honor the Complainant's request that no Formal Complaint be pursued under these procedures, the college may nevertheless take other appropriate steps designed to eliminate the reported Prohibited

Conduct, prevent its recurrence, and address its effects on the Complainant and the college community. Those steps may include offering the Complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other supportive measures tailored to the circumstances.

The Complainant may later choose to pursue a Formal Complaint.

Upon receipt of new or additional information, the Title IX Coordinator may reconsider the Complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

**ii. Where the college determines that the Complainant's request(s) cannot be honored**

Where the Title IX Coordinator determines that the college cannot honor the Complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator will promptly initiate the resolution process under these procedures by making a signed, written Formal Complaint on behalf of the college. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

The Title IX Coordinator will notify the Complainant that the college intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the Complainant. The Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, typically, the Complainant's identity would have to be disclosed as part of the college's investigation.

The Complainant is not required to participate in any proceedings that follow but will be treated as the Complainant in the process and will receive all required communications and opportunities to participate in the investigation and adjudication. However, if the Complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the college's ability to investigate meaningfully and respond to a report of Prohibited Conduct may be limited.

### **III. ADVISORS**

At all stages under these procedures, both the Complainant and Respondent have the right to select and consult with an advisor of their own choosing. Complainants and Respondents should review the Sexual Misconduct Policy's provisions regarding consultants, advisors, and legal counsel to understand the resources available to them. (See, SMP, Section XIII.B)

Advisors and support persons may accompany the party to all meetings, such as investigative interviews and proceedings, but, except as provided in these procedures, may not speak on the party's behalf or otherwise interfere with meetings or proceedings.

During hearings, advisors may confer with the party, and on the party's behalf, at the time and in the manner prescribed by the Hearing Officer. **Advisors will also conduct cross-examination of the opposing party(ies) and all witnesses.**

The party may choose among a panel of trained advisors to serve as the advisor in order to conduct examination and cross-examination at hearings, but can use an advisor of their choosing. If a party does not have an advisor present at the live hearing, the college will provide, without fee or charge to that party, an advisor to question parties and witnesses and to conduct cross-examination on behalf of that party. If a party chooses not to use college-provided advisors to conduct cross-examination, the college will not pay for the cost of other advisors retained by the party.

Throughout the proceedings, advisors and support persons may also help the party prepare written submissions.

The college will not interfere with the parties' rights to have an advisor of their choice; however, advisors and support persons must agree to adhere to these procedures. Where either the Title IX Coordinator or Hearing Officer determines that an advisor's conduct undermines the integrity of the policy or these procedures, the advisor will be prohibited from continuing to serve as advisor or support person in that case. The affected party will be permitted to obtain a substitute advisor or support person.

#### **IV. WRITTEN SUBMISSIONS**

For all written submissions permitted by these procedures, the documents must be submitted by a party. Written submissions from an advisor, or other individual made on behalf of a party, will not be included in the investigative or hearing records.

Where a form is available for a written submission, the party must use the form for the submission. Where required by these procedures, the party must sign the written submission.

#### **V. NON-INVESTIGATORY MEASURES AVAILABLE UNDER THE TITLE IX PROCEDURES**

Non-investigatory measures available under the Title IX Procedures include supportive measures, emergency removal procedures, and administrative leave. These are discussed in detail in the SMP, Section XVI.

#### **VI. PENDING CRIMINAL INVESTIGATIONS**

In cases where there is a criminal investigation, the college process will run concurrently with such investigation. The college may grant temporary delays reasonably requested by law enforcement for evidence gathering.

#### **VII. NOTICE TO PARTIES UPON THE ISSUANCE OF A FORMAL COMPLAINT**

At the issuance of a Formal Complaint, the Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Formal Complaint and these procedures. Such notice will include the following:

1. Notice of the college's Title IX Procedures, including the option to participate in informal resolution procedures, and a hyperlink to a copy of the process
2. Notice of the allegations potentially constituting Prohibited Conduct, and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered Prohibited Conduct; and the date and location of the alleged incident, if known
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX procedures
4. 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 inspect and review evidence and accompany the respective parties to meetings and proceedings
5. A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the college does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source
6. Sanctions and remedies that may be imposed
7. The identity of the investigator
8. That the parties have a range of resources available to them, including mental health and academic support resources
9. That retaliation is prohibited
10. That the parties must preserve any potentially relevant evidence, whatever its form

If, in the course of an investigation, the college decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered Prohibited Conduct falling within the these procedures, the college will notify the parties whose identities are known of the additional allegations by their college email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

## **VIII. THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING**

Both the Complainant and the Respondent may decline to participate in the investigation and/or hearing. However, the college may continue without a party's participation, reaching findings and issuing sanctions.



## A. Declining to Participate in the Investigation

If a party declines to participate in investigative interviews deemed necessary by the investigator, the Hearing Officer may not draw an inference about the determination regarding responsibility based solely on a party's or witness's failure to participate.

## B. Declining to Attend or Participate in the Hearing

Neither party is required to attend a hearing for the hearing to proceed. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed.

If neither a party nor their advisor appears at the hearing, the college will provide, at the college's expense, an advisor to appear on behalf of the non-appearing party to conduct an examination and cross-examination of a party or witness.

The Hearing Officer may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

# IX. DISMISSAL OF A FORMAL COMPLAINT

## A. Mandatory Dismissal

The Title IX Coordinator must dismiss a Formal Complaint and close a case where:

1. there is no jurisdiction under these procedures because the conduct did not occur in the college's education program or activity, or did not occur against a person in the United States; or
2. the facts set forth in the Formal Complaint do not constitute Prohibited Conduct under these procedures even if proved.

If the alleged conduct would, if true, support a finding that another college policy has been violated, the college may, in its sole authority, transfer the case for further handling under the appropriate policy.

If the Title IX Coordinator or the investigator determines that a Formal Complaint must be dismissed, they will provide the parties with a written decision explaining the reason for the dismissal.

## B. Discretionary Dismissal

The Title IX Coordinator **may** dismiss a Formal Complaint and close a case where:

1. the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
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. These circumstances could include, but are not limited to, the Complainant's failure or refusal to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures.

If the Title IX Coordinator determines that a Formal Complaint should be dismissed under this provision, they will provide the parties with a written decision explaining the reason for the dismissal.

## **B. Review of Title IX Coordinator’s Decision to Dismiss a Formal Complaint**

If the Title IX Coordinator determines that a Formal Complaint should be dismissed, they will provide the parties with a written decision explaining the reason for the dismissal and the opportunities for appeal. Appeals will be decided pursuant to the process described in Section XIX below.

The decision on the appeal is final; there is no further right to appeal.

## **X. CONSOLIDATION OF REPORTS, FORMAL COMPLAINTS, AND HEARINGS UNDER THESE PROCEDURES**

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints under these procedures arising out of the same factual circumstances may be joined in one investigation when:

1. there is more than one Complainant or Respondent; or
2. a cross-complaint has been filed by a Respondent against a Complainant.

At the discretion of the Title IX Coordinator and in consultation with the investigator, multiple Formal Complaints, whether or not joined in one investigation, and multiple investigations under these procedures may be joined in one hearing if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders. In determining whether to consolidate, the Title IX Coordinator will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings.

In all hearings involving multiple Respondents, the sanctions and remedies will be considered and imposed individually for each Respondent.

In the event that the allegations under the Sexual Misconduct Policy are made together with allegations of a violation of a separate policy, whether the Nondiscrimination Policy, Student Code of Conduct, Faculty Legislation, or Staff Handbook, the college shall have the right, within its sole discretion, to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy but may be at the discretion of the Title IX Coordinator.

## **XI. INFORMAL RESOLUTION OF A FORMAL COMPLAINT**

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of Prohibited Conduct through informal resolution, an administrative process.

Participation in an informal resolution process is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for informal resolution and to determine the appropriate terms. **However, pursuant to Maryland law, mediation or informal resolution, even if voluntary, may not be used to resolve complaints of sexual assault or sexual coercion, including rape and fondling.**

If the parties agree to participate in an informal resolution process, the Title IX Coordinator will:

1. provide to the parties a written notice disclosing
  - i. the allegations;
  - ii. the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
  - iii. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint; and
  - iv. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. obtain the parties' voluntary, written consent to the informal resolution process; and
3. not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The following additional conditions apply to this process:

1. Informal resolution will not include face-to-face meetings between the Complainant and the Respondent.
2. The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire informal resolution process.
3. If the process is terminated for any reason, the matter will be resolved pursuant to the Formal Complaint resolution process under these procedures. For this reason, the investigator will not participate in the informal resolution process.
4. The Title IX Coordinator will oversee the informal resolution process and will have access to all college and investigation records in the matter, including any records or reports prepared during an investigation.
5. If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement.
6. The Title IX Coordinator will prepare an informal resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Officer after a hearing under these proceedings.
7. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.
8. Once a party has returned the signed agreement to the Title IX Coordinator, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator in person or in writing.
9. Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the Formal Complaint.

10. After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.
11. Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the informal resolution agreement. Noncompliance may be subject to proceedings under the Campus Code of Conduct or disciplinary procedures for faculty and staff.
12. If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the Title IX Coordinator nor the parties will disclose to the Hearing Officer or the Appeals Panel either the fact that the parties had participated in the informal resolution process or any information learned during the process.

## **XII. INVESTIGATIONS OF A FORMAL COMPLAINT**

### **A. General Rules of Investigations**

After the Title IX Coordinator issues a notice of complaint to the parties, a single investigator appointed by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to be Prohibited Conduct.

The college, and not the parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the college and does not indicate responsibility.

The investigator cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

The investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence (i.e., evidence that tends to prove and disprove the allegations) as described below.

### **B. Investigative Interview Process**

The investigator will gather information from the Complainant, the Respondent, and other individuals who have information that is directly related to the allegations in the Formal Complaint.

The parties will have the opportunity to request in writing witnesses they would like the investigator to interview and questions and topics they would like the investigator to ask witnesses, themselves, and the other party.

The investigator has the discretion to determine whether any proffered witnesses have information directly related to the allegations in the Formal Complaint, and, accordingly, the investigator will determine which witnesses to interview.

Investigative interviews with the parties and any witnesses will be audio recorded. At the start of an interview session, the investigator will inform an interviewee that the session is being audio recorded. Parties and witnesses will receive copies of audio recordings of their own interviews.

The parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews. Upon receiving the transcripts, the parties may listen to audio recordings of interviews of the other party and any witnesses during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

All persons being interviewed, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record. **The failure will not constitute grounds for appeal.**

### C. Evidentiary Materials

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator to seek to obtain.

The investigator has the discretion to determine whether the requested evidentiary materials are relevant to the allegation, and, accordingly, the investigator will determine what evidentiary materials to seek to obtain.

### D. Expert Testimony and Materials

The investigator will provide an equal opportunity for the parties to present expert witnesses, including medical, forensics, technological, or other expert testimony and materials (such as writings and recordings).

The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigatory report.

### E. Evidence to Be Excluded or Redacted From the Record

At the request of a party or witness, the investigator during the investigation or the Hearing Officer during the hearing process will exclude and, as necessary, redact content falling into one of the four categories enumerated below.

1. **Prior Sexual History of the Complainant:** Evidence of the Complainant's prior sexual behavior or sexual predisposition, unless such evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

2. **Past Conduct Findings:** During both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own past college disciplinary findings. Such findings are admissible at the sanction determination stage of the process.
3. **Records maintained by a mental health or medical professional or para-professional without the party's written consent:** Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own mental or physical health diagnosis and/or treatment.
4. **Information related to a legally recognized and unwaived privilege,** such as attorney client communications.

The investigator during the investigation and the Hearing Officer during the hearing process will also exclude and, as necessary, redact content that is impermissible under applicable law or these procedures.

Exclusions and redactions will be noted and thereby become part of the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Hearing Officer. The parties should make all requests for exclusions and redactions to the investigator during the investigation prior to the issuance of the final investigative record and report.

## F. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. evidence that is relevant, even if that evidence is not ultimately relied upon by the college in making a determination regarding responsibility; and
2. inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

The college will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic or hard copy format. The college is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The investigative record shall include:

1. transcripts/summaries or audio files of all interviews by the investigator with the parties and any witnesses; and
2. copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation, except those that are excluded pursuant to paragraph XII.E, whether or not the investigator intends to rely on such information in the investigative report.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. **Parties may request a reasonable extension to this deadline.** This response may include

1. Provision of additional evidence
2. Comments about content, including requests for redaction
3. Requests for additional meetings with the investigator
4. Requests for the investigator to conduct further investigation and/or questioning of additional witnesses
5. Any objections to the relevance of certain evidence

The investigator will consider the parties' written responses before completing the investigative report.

The Title IX Coordinator will provide copies of the parties' written responses, including any additional evidence, to the investigator, all parties, and their advisors.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

**The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX procedures. The parties and their advisors agree not to photograph or otherwise copy the evidence.**

## G. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

## H. Investigative Report

The investigator will create an investigative report that fairly summarizes relevant evidence. The investigative report is not intended to catalog all evidence obtained by the investigator but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory—i.e., tending to prove and disprove the allegations—relevant evidence) will be referenced in the investigative report, and irrelevant evidence will be included in the appendices to the report.

The investigator will not render an opinion with respect to responsibility.

## I. Review of the Final Investigative Record and Report

Upon completion, the final investigative record and report will be provided to the parties and their advisors to inspect and review in electronic form. The parties will have an opportunity to review and comment on the final investigative record and report at least ten (10) business days prior to the hearing and will continue to have access to such materials throughout the hearing. The parties may submit a written response to the report that will be considered by the Hearing Officer and will become part of the final investigative record. At the hearing, the Hearing Officer will rely upon the relevant evidence in the

final investigative record as well as any additional statements and information provided to the Hearing Officer pursuant to the procedures set forth below.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning identified in the parties' responses.

### **XIII. HEARINGS**

#### **A. Overview of Hearing Process**

The college will not issue a disciplinary sanction arising from an allegation of covered Prohibited Conduct within the jurisdiction of these procedures without holding a live hearing, unless the matter is otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the college's sole discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through remote video-conferencing. This technology will enable participants simultaneously to see and hear each other. At its discretion, the college may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording and/or transcript. That recording or transcript will be made available to the parties for inspection and review.

**Prior to obtaining access to any hearing materials, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Procedures. Once signed, this agreement may not be withdrawn.**

#### **B. Continuances or Granting Extensions**

The Title IX Coordinator may determine that multiple sessions or a continuance (i.e., a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the Title IX Coordinator will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

#### **C. Participants in the Live Hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are the Complainant and Respondent (the parties).

1. The parties cannot waive the right to a live hearing, except that both parties may agree to do so through a documented Informal Resolution Process.
2. The college may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
  - i. Note: A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior



statement would not include a document, audio recording, audiovisual reading, or digital media, including but not limited to text messages, emails, and social media postings, that constitutes the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

3. The college will not threaten, coerce, intimidate, or discriminate against the party in an attempt to secure the party's participation.

#### D. The Decision-maker

1. The decision-maker will be a single Hearing Officer appointed by the Title IX Coordinator, who shall receive annual training as required by law.
2. No Hearing Officer will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may the Hearing Officer serve on the appeals body in the case.
3. No Hearing Officer will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
4. The Hearing Officer will be trained on topics that include how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.
5. The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias prior to the commencement of the live hearing.

#### E. Advisor of choice

1. The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
2. The advisor of choice may accompany the parties to a hearing, but may not speak for the party, except for the purpose of conducting cross-examination.
3. In addition to selecting an advisor to conduct cross-examination, the parties may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party. Only one advisor may be present during a hearing; thus, if a second advisor is chosen to conduct cross-examination, only that advisor may be present during that portion of the hearing.
4. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the college will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
5. The advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
6. The advisor is not prohibited from being a witness in the matter.
7. If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.

8. If neither a party nor their advisor appear at the hearing, the college will provide an advisor to appear on behalf of the non-appearing party.

## F. Witnesses

1. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
2. If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

## G. Presumption of Non-responsibility and Standard of Proof

The Respondent will be presumed “not responsible” unless and until a Hearing Officer determines the Respondent is responsible.

The Hearing Officer will determine whether the Respondent is responsible by using a preponderance of the evidence standard. This means that to find the Respondent responsible for any Prohibited Conduct, the Hearing Officer must be satisfied, based upon the hearing record, that it is more likely than not that the Respondent committed all of the elements of the alleged Prohibited Conduct.

The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross-examination or other questions.

## H. Notice of Hearing

At the completion of an investigation, if a case is referred to the Hearing Officer for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at issue; a brief summary of the alleged Prohibited Conduct; the date, time, and place of the hearing; and the name of the Hearing Officer.

All efforts will be made to provide the Notice of Hearing no later than five (5) business days prior to the hearing and to schedule the hearing as soon as practicable.

## I. Request to Reschedule Hearing

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Officer may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

## J. Newly Discovered Evidence

If after the issuance of the final investigative record and investigative report and prior to the issuance of the Hearing Officer’s decision, a party or the investigator seeks to present a witness or introduce evidence

not requested prior to the hearing and not previously disclosed to the investigator, the Hearing Officer may grant admission of the evidence only upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where a Hearing Officer permits a party to introduce a newly discovered witness or evidence, to prevent surprise to the other party, the Hearing Officer will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Hearing Officer will also reopen the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

## K. Pre-hearing Submissions by the Parties

Prior to a hearing, the parties will be asked in writing by the Title IX Coordinator to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

There are two stages at which the parties will be asked to make Pre-hearing Submissions.

1. First, the parties will be asked to submit in writing (1) opening statements and (2) names of any requested witnesses.
2. Second, once witnesses are approved, the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, including themselves, as explained below.

All Pre-hearing Submissions are waived if not completed by the stated deadlines, including any approved extensions.

Prior to the hearing, the Title IX Coordinator will distribute each party's Pre-hearing Submissions to the other party for their review.

### **First Pre-hearing Submission—Written Opening Statements and Witness Requests**

1. Upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that they have the opportunity to prepare a written opening statement and submit a written list of proposed witnesses.
2. The parties will be given ten (10) calendar days for such submissions.
3. Within the ten (10) calendar days, the parties may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.
  - i. **Written Opening Statements**
    - a. The parties may prepare a written opening statement, not to exceed 2,500 words. These statements are the parties' opportunity to tell the Hearing Officer why they should find in the party's favor. These statements must be signed by the parties. In presenting their statements, the parties should be responsive to the investigative record by directly addressing and responding

to specific information contained in the investigative record and citing specific page numbers. The parties may want to call the Hearing Officer's attention to specific interview statements or evidentiary materials contained in the investigative record. Again, the parties should include specific page citations to the final investigative record.

- b. The parties may not add or address information not contained in the investigative record, as the Hearing Officer will not consider new information, except as noted above. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Officer does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation statements submitted at the time of sanctioning.

ii. Witness Requests

All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Officer. If a party wants the Hearing Officer to hear directly from a witness, the party must submit a written request within the ten (10) business days.

Such a request should include:

- a. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify
- b. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the Hearing Officer in determining responsibility

**Second Pre-hearing Submission—Questions and Topics**

1. The Hearing Officer will review the parties' witness requests and will decide which witnesses will be asked to provide testimony at the hearing. The Hearing Officer may call witnesses not requested by the parties.
2. The parties will be provided with a witness list and informed in writing that they have an opportunity to propose, also in writing:
  - i. Questions and topics for the witnesses.
  - ii. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture, but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.
3. The Hearing Officer will establish a reasonable deadline for the submissions, typically no longer than five (5) calendar days.
4. Within the deadline established by the Hearing Officer, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Officer. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

5. The Hearing Officer will determine which of the parties' requested questions will be asked or topics covered.
6. The Hearing Officer will approve in substance all questions or topics that are relevant and that are not prohibited by these procedures or applicable laws, unduly prejudicial, or cumulative of other evidence.
7. At the hearing, the Hearing Officer will ask pre-approved questions of the parties and witnesses and the parties' advisors will be permitted to cross-examine the opposing party and the witnesses.

## **XIV. HEARING PROCESS AND FORMAT**

### **A. Overview of Hearing Process and Format**

All hearings will be private. The only persons present will be the parties, their advisor, witnesses (when testifying), the Hearing Officer, the Title IX Coordinator, the investigator, and any staff necessary for the conduct of the hearing.

If the hearing is not conducted virtually, the parties with any advisors will be in separate, private rooms, with the hearing officer in a separate room. Even if conducted virtually, parties will be limited to having one advisor present with them during the hearing.

The parties will participate remotely or in person via a secure audio-visual connection, and may be accompanied by their advisor. At all times while providing testimony the parties will be able to see and hear each other.

Witnesses may be participate, either remotely or in the physical presence of the Hearing Officer, only for their own testimony, and the parties will be able to see and hear this testimony.

The Hearing Officer may establish reasonable time limits, rules, and format, providing the parties with equal opportunities to participate. The Hearing Officer may adjourn the hearing, once commenced, and later reconvene the hearing in consideration of factors that include but are not limited to the unavailability of a witness, party, Hearing Officer, or needed personnel; inclement weather; or in order to make an evidentiary or procedural ruling.

Formal rules of evidence will not apply.

### **B. Hearing Procedures**

For all live hearings conducted under this Title IX Procedure, the procedure will be as follows:

1. The Hearing Officer will open and establish rules and expectations for the hearing.
2. The Parties will each be given the opportunity to provide opening statements.
3. The Hearing Officer will ask questions of the parties and witnesses.
4. Parties will be given the opportunity for live cross-examination of parties and witnesses after the Hearing Officer conducts their initial round of questioning. During the parties' cross-examination, the Hearing Officer will have the authority to pause cross-examination at any time

for the purposes of asking Hearing Officer's own follow up questions, and any time necessary in order to enforce the established rules of decorum.

5. Should a party or the party's advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer. A party's waiver of cross-examination does not eliminate the ability of the Hearing Officer to use statements made by the party who was not cross-examined.

### C. Live Cross-examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

During questioning by the parties' advisors, the Hearing Officer, will, **for each question asked**, make a determination whether the question seeks relevant information. If the question is not seeking relevant information, the Hearing Officer will disallow the question and will explain the reason why a question is not relevant.

### D. Review of Hearing Transcript

The transcript or audio recording of the hearing will be available for review by the parties within ten (10) calendar days, unless there are any extenuating circumstances. A hard copy of the transcript of the hearing will not be provided to parties or advisors.

## XV. DETERMINATION REGARDING RESPONSIBILITY

### A. Standard of Proof

The college uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this policy.

### B. General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Officer.

Hearing Officers shall not draw inferences regarding a party's or witness's credibility based on the party's or witness's status as a Complainant, Respondent, or witness, nor shall they base their judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest on whether a party's or witness's testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Parties may call "expert witnesses" for direct and cross-examination and the Hearing Officer may award such evidence the weight they deem appropriate. While the expert witness will be allowed to testify and be cross-examined, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses.

While character witnesses will be allowed to testify and be cross-examined as required by the Final Rule, the Hearing Officer will afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the college admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed, the Hearing Officer will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

**Where a party's or witness's conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party's or witness's credibility.**

The following information may not be considered by the Hearing Officer:

1. Questions and evidence about the 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:
  - i. someone other than the Respondent committed the conduct alleged by the Complainant; or
  - ii. 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.
2. If a party or witness does not submit to cross-examination at the live hearing in whole or in part, for any reason, the Hearing Officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility. The prohibition on reliance on "statements" applies not only to statements made during the investigation or hearing, but to *any* statement of a party or witness who does not submit to cross-examination (e.g., a SANE report, admission during an interview, incriminating emails and texts, conversations with other witnesses). This

prohibition does not apply to statements that themselves are part of the wrongful conduct alleged, e.g., harassing emails.

### C. Closing Statements

The parties may provide both oral and written closing statements. This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions.

The parties may not add or address information not contained in the hearing record, nor may the parties address issues that pertain to sanctions and remedies. The Hearing Officer does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation statements.

The Hearing Officer will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Hearing Officer will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements.

Each party's written statement will be limited to 2,000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party and the Hearing Officer for their review.

These statements must be signed by the parties.

### D. Deliberations on Findings of Responsibility

After closing arguments, the Hearing Officer will begin their deliberations. Deliberations will be completed as expeditiously as possible.

The Hearing Officer will make one of the following determinations about responsibility using the preponderance of the evidence standard:

1. the Respondent is responsible for violating this policy;
2. the Respondent is not responsible for violating this policy; or
3. there is insufficient information to determine whether the Respondent is responsible for violating this policy.

### E. Sanctions and Remedies

A Hearing Officer that finds the Respondent responsible will continue their deliberations to consider whether to refer the matter to appropriate officials for determination of sanctions.

If the matter is referred for a determination of sanctions, the parties will be requested to provide Impact/Mitigation statements to the TIX Coordinator. Potential sanctions that may be imposed upon referral are listed in the Sexual Misconduct Policy, Appendix B.

The Hearing Officer may also recommend to the Title IX Coordinator that the college take measures on campus to remedy the effect or prevent the reoccurrence of such Prohibited Conduct.



## F. Hearing Officer's Decision

### 1. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility and referral for sanctions and remedies, will be issued by the Hearing Officer within ten (10) calendar days of the completion of the hearing.

### 2. Finality

The determination regarding responsibility referral for sanctions and remedies becomes final either on the date that the college provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### 3. Contents of Determination

- i. The written Determination Regarding Responsibility will include:
  - a. identification of the allegations potentially constituting covered Prohibited Conduct;
  - b. a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. findings of fact supporting the determination; and
  - d. conclusions regarding which section of the Sexual Misconduct Policy, if any, the Respondent has or has not violated.
- ii. For each allegation:
  - a. a statement of, and rationale for, a determination regarding responsibility;
  - b. a statement of, and rationale for, any recommended referral for determination of sanctions;
  - c. a statement of, and rationale for, any referral for remedies designed to restore or preserve equal access to the college's education program or activity; and
  - d. the college's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

**Note that the Hearing Officer must determine whether a finding of responsibility merits referral to the appropriate official for consideration of sanctions and/or the Title IX Coordinator for the imposition of remedies. The Hearing Officer does not determine which sanctions or remedies to impose beyond this referral.**

## G. Hearing Record

An audio recording will be made of all hearings. The parties may listen to the audio recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

In the event of any failure rendering the audio recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input from the parties, any witnesses whose testimony is at issue, and the Hearing Officer. **Such failure will not constitute grounds for appeal.**

Individuals appearing before the Hearing Officer, whether as a party or witness, are prohibited from recording any portion of the hearing.

The hearing record will include: the audio recording of the hearing, a transcript of the hearing, the Hearing Officer's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, and written submissions permitted by these procedures made to the Hearing Officer or during the hearing.

## **XVI. WITHHOLDING DEGREES**

At the discretion of the Vice President and Dean of Students, a student may not register for classes, participate in room draw, participate in Commencement, or receive a degree if they have not completed or complied with sanctions imposed under this policy or if an investigation is in process. The college may withhold awarding a degree otherwise earned until the completion of procedures set forth in this policy, including the completion of any sanctions imposed.

## **XVII. POTENTIAL HEARING OFFICER OR APPEAL PANEL MEMBER CONFLICT OF INTEREST**

Upon receipt of written notice of the identity of the Hearing Officer, if a party believes that they have a potential conflict of interest with the Hearing Officer, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Officer. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Officer has discretion whether to recuse themselves. If a party believes that they have a potential conflict of interest with an appellate decision-maker, the party should notify the Title IX Coordinator, who will forward the notification to the relevant decision-maker. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. Appellate decision-makers have discretion whether to recuse themselves.

## **XVIII. IMPOSITION OF SANCTIONS AND REMEDIES**

If the Hearing Officer finds the Respondent responsible for violating the policy, and a referral for determination of sanctions and/or remedies has been made by the Hearing Officer, the matter shall be referred by the Title IX Coordinator to the officials noted below for consideration of sanctions. If not previously submitted, the parties must submit an Impact/Mitigation statement within five (5) days after being notified to do so and the statements will be distributed to both parties.

## A. Complaints Against Faculty or Staff

If the responding party is a faculty or staff member, the Hearing Officer's decision and referral for sanctions will be provided to the appropriate administrator for further consideration as follows:

1. Faculty—The Provost will consider the imposition of sanctions, after considering the parties' Impact/Mitigation statements.
2. Staff—staff, the AVP for Human Resources will consider the imposition of sanctions, in consultation with the supervisor, after considering the parties' Impact/Mitigation statements.

The administrator shall make a written determination of sanctions within ten (10) days of referral of the matter from the Title IX Coordinator. The written statement must contain the rationale for, as to each allegation, any disciplinary sanctions that will be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the College to the Complainant.

The Title IX Coordinator shall provide to both parties simultaneously in writing through their College email account or such other appropriate means:

- the written determination of the Hearing Officer;
- the written determination of the sanction officer;
- the college's procedures for the Complainant and Respondent to appeal the results;
- any change to the result; and
- when such results become final.

## B. Complaints Against Students

Imposition of Sanctions: The matter shall be referred to the Associate Dean of Students or designee, who shall consider the imposition of sanctions after considering the parties' Impact/Mitigation statements, and may impose sanctions.

The Associate Dean of Students shall make a determination of sanctions within ten (10) days of referral of the matter from the Title IX Coordinator. The administrator shall make a written determination of sanctions within ten (10) days of referral of the matter from the Title IX Coordinator. The written statement must contain the rationale for, as to each allegation, any disciplinary sanctions that will be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the College to the Complainant.

The Title IX Coordinator shall provide to both parties simultaneously in writing through their College email account or such other appropriate means:

- the written determination of the Hearing Officer;
- the written determination of the sanction officer;
- the college's procedures for the complainant and respondent to appeal the results, if such procedures are available;
- any change to the result; and
- when such results become final.

## C. List of Sanctions

Potential sanctions that may be imposed on employees and students are identified in Appendix B to the Sexual Misconduct Policy.

## **XIX. APPEAL OF A HEARING OFFICER DECISION, DISMISSAL OF FORMAL COMPLAINT AND IMPOSITION OF SANCTIONS**

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility and imposition of sanctions. To appeal, a party must submit their written appeal to the TIX Coordinator within ten (10) calendar days of being notified of the decision and sanctions, if any, indicating the grounds for the appeal. The written appeal shall include a written Impact or Mitigation Statement.

Dismissals of formal complaints are appealed to the decision-makers described in Section XIII. A and B for the respective respondent.

Hearing Officer decisions and the imposition of sanctions may be appealed as follows:

- Appeals of decisions relating to respondents who are employees will be decided by the President.
- Appeals of decisions relating to respondents who are students will be decided by the Vice President and Dean of Students.

All appeals will be based solely upon the hearing record and impact statements, if any. When relevant to a stated ground for appeal, the appellate decisionmaker may supplement the record on appeal with evidentiary materials excluded or redacted from the investigative record or newly discovered evidence.

Appeals may be brought only upon one or more of the following grounds:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
3. The Title IX Coordinator, investigator, or Hearing Officer 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(s) imposed are disproportionate for the facts of the case and/or the violation of the policy that was found.

The appealing party commences an appeal by submitting a written statement to the Title IX Coordinator within ten (10) calendar days of service of the notice of dismissal of a complaint or Hearing Officer's decision and sanctions determination. Within the ten (10) calendar days, the appealing party may request an extension of time by submitting a request to the Title IX Coordinator explaining the reason(s) for the request. The appellate decisionmaker will have discretion to grant such a request upon a finding of good cause for the delay. Failure to submit an appeal within the ten (10) calendar days or any approved extension constitutes waiver of the right to appeal.

The appeal statement must set forth:

1. the determination(s) and/or sanction being appealed;
2. the specific ground(s) for the appeal;
3. the facts supporting the grounds; and
4. An Impact/Mitigation statement.

A copy of the appeal statement will be provided to the other party, who within ten (10) calendar days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party.

The Appellate decisionmaker will establish a reasonable schedule for issuing a written decision, typically no later than twenty (20) calendar days after receipt of the non-appealing party's submission or the time for submission has expired.

The decision will be final and binding on all parties. Any decision will be based solely upon the hearing record and, in appropriate cases, upon a showing of new evidence relevant to the ground for appeal. The decision will include the rationale for the decision.

The appellate decisionmaker may affirm the decision of the Hearing Officer or sustain any of the above-specified grounds for appeal, in which case the decision-maker may:

1. Reinstate a Formal Complaint that has been dismissed
2. Reverse or modify a finding of responsibility
3. Change or modify a sanction
4. Remand a case to the hearing officer for clarification or reconsideration consistent with the appellate decisionmaker's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case
5. Remand a case for a new hearing to either the original hearing officer or a different hearing officer
6. Remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original investigator or to a new investigator

If the Appellate decisionmaker calls for the admission of new evidence, it will remand the case to the Hearing Officer from which it originated for a new hearing, if it deems it necessary to do so.

## **XX. IMPOSITION AND ENFORCEMENT OF SANCTIONS AND REMEDIES**

The Title IX Coordinator will be responsible for ensuring that any sanctions imposed are implemented and completed. This may require contacting college employees in a position to enforce or monitor sanctions, such as the One Card Coordinator, the Director of Residential Life, or an employment supervisor. In contacting such persons, the Title IX Coordinator will only disclose as much information as is necessary to ensure that the sanctions are enforced or monitored.

The Title IX Coordinator will be responsible for implementing any remedies deemed necessary and will take into consideration the Impact/Mitigation Statements submitted by the parties in doing so. Remedies

may include the extension of supportive measures previously put in place, and shall be designed to provide equal access to the Complainant to the college's programs and activities. A decision to impose remedies is not appealable by either party. The Respondent shall be notified of the implementation of any remedies that affects the Respondent.

The implementation of remedies is not subject to appeal and is final.

## **XXI. RESPONSIBLE OFFICE**

For any questions regarding these procedures, please contact [titleixcoordinator@goucher.edu](mailto:titleixcoordinator@goucher.edu)

## **XXII. HISTORY**

Adopted August 2020; Updated September 2020, June 2022