

APPLIES TO: Employees, Students, and Third Parties, as applicable

POLICY

Effective: 11/16/20
Supersedes: 9/26/16

- A. It is the policy of Gaston College to provide an inclusive, safe, and welcoming working and learning environment for all members of the College community. In accordance with applicable federal and state laws, administrative regulations, and College policy, the College prohibits discrimination in its education programs and activities based on sex. This Policy applies to conduct that occurs in a College Education Program or Activity located within the United States.
- B. Under Title IX, discrimination on the basis of sex includes quid pro quo harassment; sexual harassment; and sexual assault, stalking, dating and domestic violence (collectively referred to as "sexual harassment"). At the time that a complaint is filed, the Complainant must be participating in (or attempting to participate in) an education program or activity of the College. An education program or activity includes locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.
- C. This policy applies to allegations and complaints of sexual harassment as defined herein. All other complaints of discrimination or misconduct that do not fall within the jurisdiction of Title IX may be made through other procedures.
- D. To respond to a notice of sexual harassment or allegations thereof, the College's Title IX Coordinator (TIXC), Deputy Title IX Coordinator (DTIXC), or any College Official who has authority to institute corrective measures on behalf of the institution, must have *actual knowledge* of sexual harassment or allegations of sexual harassment, as defined by Title IX. *Actual knowledge* does not necessarily trigger the obligation to investigate, but may trigger the obligation to provide supportive measures. Actual knowledge is not met when the only person with actual knowledge is a Respondent.
- E. The College's Title IX Coordinator(s) (TIXC) and/or Deputy Title IX Coordinator(s) (DTIXC) has oversight responsibility for handling Title IX and Sexual Harassment complaints under this policy.

PROCEDURE

Effective: 11/16/20
Supersedes: 9/26/16

A. REPORTING AND SUPPORT SERVICES

1. The filing of a formal, written complaint initiates the formal complaint process and is available to any person who is participating in (or attempting to participate in) a College educational program or activity.
2. Any person wishing to make a report relating to Title IX and Sexual Harassment may do so by reporting the concern to the Title IX Coordinator (TIXC), Deputy Title IX Coordinator (DTIXC), or to any College Official who has authority to institute corrective measures on behalf of the

institution such as a supervisor, Dean, or administrator. A formal written complaint can be submitted in person, by mail, or by email.

3. College Officials who receive information regarding a potential violation of this policy, are to report this information to the TIXC or DTIXC promptly. In some circumstances, there are individuals in positions such as licensed health-care professionals and professional counselors, who are not required, or statutorily prohibited, to report such information.
4. Employee complaints or reports about sex discrimination, including sexual harassment, should be submitted to the TIXC, and student complaints or reports should be submitted to the DTIXC. The contact information for the TIXC and DTIXC are as follows:

Employee Reporting

Todd Baney, Title IX Coordinator
Vice President for Administrative Services/CHRO
Beam Administration Building
Gaston College
Office: (704) 922-6485
baney.todd@gaston.edu

Student Reporting

Dr. Audrey Sherrill, Deputy Title IX Coordinator
Vice President for Student Affairs and Enrollment Management
Myers Center
Gaston College
Office: (704) 922-6217
sherrill.audrey@gaston.edu

5. Law Enforcement

The College complaint process is not a substitute for instituting legal action, and individuals may also choose to report sexual misconduct directly to local law enforcement agencies. If required or warranted by the nature of the allegations, the College may notify appropriate law enforcement authorities. The College's investigation may be delayed temporarily while a criminal investigation gathers evidence. In the event of such a delay, the College will make available supportive measures when necessary. To file a report directly with local law enforcement agencies, individuals can dial 911. To file a report with Campus Police, or for assistance with filing a report, individuals may contact:

Gaston College Campus Police & Security Department
122 Comer Engineering Building
Gaston College
(704) 922-6480

6. Amnesty

The College encourages reporting of incidents of prohibited conduct and seeks to remove any barriers to reporting. The College recognizes that an individual who has been drinking or using drugs at the time of an incident may be hesitant to make a report because of potential

consequences for their own conduct. Individuals who report prohibited conduct or participate as witnesses will not be subject to disciplinary sanctions for personal consumption of alcohol and/or other substances; however, the College may initiate an educational discussion with individuals about their alcohol and/or drug use or may direct these individuals to services such as counseling for alcohol and/or drug use. Amnesty will not be extended for any violations of College policy other than alcohol/drug use. The use of alcohol, drugs, and/or legally prescribed medication does not justify or excuse behavior that constitutes prohibited conduct under this policy.

7. Preserving Evidence

It is important that evidence of sexual assault be preserved, because it may be needed for prosecuting a criminal case. Victims and others should not alter the scene of an attack. The victim should not change clothes, bathe or shower, drink or eat anything, or brush his or her teeth before reporting the assault. Any items worn by the victim during the assault, but are not currently being worn, and any materials encountered during the assault (i.e., bed sheets, blankets, etc.) should be placed in a paper bag and brought along with the victim to a local hospital emergency department that has kits to collect and preserve evidence of sexual assault.

8. Off-Campus Conduct

Conduct that occurs off-campus will be evaluated to determine whether the circumstances fall within the College's jurisdiction under Title IX or should be referred to a different department or official within the College.

9. Confidentiality

Except as compelled by law or as required to conduct a full and fair complaint proceeding in response to a formal complaint, the College will treat the information obtained or produced as part of the Title IX procedures as confidential. The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), including the conduct of any investigation, hearing, or judicial proceedings arising thereunder.

10. Availability of Counseling and Support Services

Counseling and other mental health services are available on campus and in the community. Students may use the Counseling Services department and may be able to seek help through the Student Outreach Services (SOS) program. Employees of the College may be able to seek help through the Employee Assistance Program. Local or community health agencies, and counselors and psychotherapists in private practice in the area can also provide needed services.

B. COMPLAINT PROCEDURE AND BASIC REQUIREMENTS

1. These procedures apply to all complaints regarding conduct that may constitute sexual harassment, including sexual assault, as defined in this policy. The College will respond

promptly to a report of sexual harassment. All other complaints shall be addressed through other procedures.

2. The College's Title IX complaint process includes formal and informal procedures that encourage prompt resolution of complaints. In most cases, the Complainant's submission of a formal, written complaint to the TIXC or DIXC will initiate the formal complaint process. However, the TIXC or DTIXC may also submit a formal complaint under the circumstances described below.
3. The College's complaint process shall adhere to the following principles:
 - a. A person who has been accused of sexual harassment (*Respondent*) is presumed *not responsible* for the alleged conduct until a determination of responsibility is made at the conclusion of the complaint process.
 - b. All relevant evidence, including exculpatory and inculpatory evidence, will be evaluated.
 - c. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
 - d. The TIXC, DTIXC, Investigator(s), hearing officer/decision-maker(s), and persons involved with the informal resolution, and any other persons that play a significant role in the Title IX complaint process, shall not have a conflict of interest or bias for (or against) Complainants or Respondents generally or for (or against) an individual Complainant or Respondent.
 - e. The time frames for concluding the complaint process shall be reasonably prompt, as set forth in more detail in the procedures below.
 - f. The complaint process may be temporarily delayed, and limited extensions of time frames may be granted, for good cause. In such instances, written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action will be provided. Good cause may include considerations such as the absence of a party, a party's Advisor, or a witness; concurring law enforcement activity; or the need for language assistance or accommodations of disabilities.
 - g. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege will not be required, allowed, relied upon, or otherwise used. The College shall not consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in the capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that person's voluntary, written consent to do so for a complaint under this section.
 - h. No party shall be restricted from discussing the allegations under investigation or to gather and present relevant evidence.
 - i. All parties participating in a hearing, investigative interview, or other meeting shall be provided with a written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

C. INITIAL INTAKE, RESPONSE, AND ASSESSMENT

1. Upon receiving a report of conduct that could potentially be a violation of this policy, the TIXC or DTIXC will contact the Reporting party, and:
 - a. Provide the person a copy of this policy
 - b. Explain the process for filing a formal complaint
 - c. Explain avenues for resolution, including informal and formal
 - d. Explain the steps involved in an investigation and hearing under this policy
 - e. Discuss confidentiality standards
 - f. Refer to law enforcement, counseling, medical, academic or other resources, as appropriate
 - g. Implement any supportive measures deemed appropriate
 - h. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures accordingly

2. If the reporting party (Complainant) requests that no further action be taken and/or that no formal complaint be pursued, the TIXC or DTIXC will inform the Complainant that retaliation is prohibited and that honoring the Complainant's request may limit the College's ability to fully respond to the matter.

3. The TIXC or DTIXC may initiate the complaint process, even where the Complainant declines to file a formal complaint, if it is determined that the particular circumstances require the College to formally respond to and address the allegations. Circumstances to be considered include, among others, a pattern of alleged misconduct by a Respondent and whether the complaint has alleged use of violence, weapons, or other similar conduct. The TIXC or DTIXC will also consider the Complainant's wishes with respect to supportive measures and desired response by the College. Where a report is made anonymously and the TIXC or DTIXC files the complaint, both the Complainant and Respondent will receive notice of the allegations with written details and identities of the parties, if known.

4. The TIXC or DTIXC may consolidate formal complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

5. **Dismissal of Complaint Prior to Resolution**
 - a. A formal complaint must be dismissed by the TIXC or DTIXC if the alleged conduct:
 1. does not constitute sexual harassment, as defined in this policy, even if proven;
 2. did not occur in the College's educational program or activity; or
 3. did not occur against a person in the United States

 - b. In addition, a complaint may be dismissed if:
 1. at any time during the investigation or hearing, a Complainant notifies the TIXC or DTIXC in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
 2. the Respondent is no longer enrolled or employed by the recipient; or

3. specific circumstances prevent the gathering of evidence sufficient to reach a determination as to the formal complaint or any allegations therein.
 - c. Upon dismissal of a formal complaint, the TIXC or DTIXC will send simultaneous, written notice of, and reason(s) for, the dismissal to the parties. Upon notification of dismissal of the complaint, the parties may appeal this interim status via email or mail a written appeal to the President within ten (10) business days of receiving official notice of the interim status. Appeals may not exceed seven (7) double-spaced pages on 8 ½ x 11 paper with one-inch margins and 11-point font. The President shall conduct a review of the record and issue a final written decision that describes the result of the appeal and the rationale for the result. The President's decision is final.
 - d. Dismissal of a complaint under this Title IX policy does not preclude a Complainant from pursuing a complaint through other appropriate campus procedures.

D. FORMAL COMPLAINT

1. Following the initial intake, response, and assessment step involving the reporting party, if it is determined that an alleged conduct falls within the scope of this policy, the investigation and resolution procedures will be initiated.
2. The TIXC or DTIXC will send notification of the complaint to the Complainant and the Respondent (if known) with sufficient details to allow the parties to respond and prepare for initial interviews. The TIXC or DTIXC will send updated notices to both parties when additional details become available. The TIXC or DTIXC may choose to contact both parties just prior to sending the initial written notice to inform each that a notice is being sent. The initial notice should include, but is not limited to, the following:
 - a. The Complainant's allegations that potentially constitute sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview (including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known)
 - b. A copy of this policy
 - c. 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 complaint process
 - d. A statement informing the parties that they have a right to have one Advisor of their choice to assist them throughout the proceedings who may be (but is not required to be) an attorney
 - e. A statement regarding possible informal resolution
 - f. A statement that the parties have the right to inspect and review all evidence collected during the complaint process
 - g. A statement that any party who knowingly makes false statements or submits false information during the complaint process will be subject to disciplinary procedure
 - h. A statement regarding non-retaliation

- i. A statement regarding confidentiality
- j. A statement regarding an investigation and hearing under this policy
- k. A statement about supportive measures that are already determined and being provided to the Complainant that would directly affect the Respondent
- l. A statement about available supportive measures
- m. If decided, the name of the Investigator appointed to investigate the allegations; however, if not decided, a subsequent written notice will need to be sent to both parties informing of the appointment

E. INFORMAL RESOLUTION

1. At any time after a formal written complaint is filed, but prior to reaching a determination regarding responsibility, the College may offer the parties the opportunity for voluntary informal resolution, or any party may request the College facilitate an information resolution.
Note: A student allegation of sexual harassment against a College employee is not eligible for informal resolution.
2. Upon a request for informal resolution, the TIXC or DTIXC will review the facts and circumstances of the case to determine if informal resolution is appropriate to ensure that any proposed informal resolution is consistent with the College's obligations to prevent and redress sexual harassment.
3. If information resolution is agreed upon by both parties, the TIXC or DTIXC will designate an independent person (i.e., Facilitator) to facilitate the informal resolution process and provide both parties written notice of proceeding with an informal resolution, which will include the following information:
 - a. the allegations contained in the formal complaint, including dates, location(s), and identities of the parties
 - b. any agreed-upon resolution reached at the conclusion of the informal complaint process will preclude the parties from resuming a formal complaint arising from the same allegations
 - c. the name of the designated Facilitator
 - d. The potential outcomes resulting from participating in the informal resolution process
 - e. notice 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 complaint process with respect to the formal complaint
4. Informal resolution is voluntary. The Complainant and Respondent must provide written consent for informal resolution to take place.
5. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of the allegations.
 - a. The resolution agreement must include a waiver of the parties' right to have a formal hearing on the allegations that have been informally resolved.
 - b. Parties are prohibited from revoking or appealing a resolution agreement. Should the Respondent violate the terms of an informal resolution agreement, such violation will subject the Respondent to an investigation and the formal grievance process contained in this procedure.

- c. If a resolution agreement is not reached, the College will continue with a formal investigation.

F. SUPPORTIVE MEASURES

1. Supportive measures, as defined in this policy, will be based on the facts and circumstances of each situation. The TIXC or DTIXC is responsible for coordinating the effective implementation of supportive measures.
2. The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.
3. Supportive measures may include, but are not limited to, the following:
 - a. counseling
 - b. extensions of deadlines or other course-related adjustments
 - c. modifications of work or class schedules
 - d. campus escort services
 - e. mutual restrictions on contact between the parties
 - f. changes in working or housing locations
 - g. leaves of absence
 - h. increased security and monitoring of certain areas of the campus

G. INVESTIGATION

1. If resolution of the allegations does not proceed through the informal process, the matter will proceed with an investigation and resolution through the formal complaint processes.
2. Parties and witnesses are expected to cooperate in the investigation process to the extent required by law and this policy.
3. The TIXC or DTIXC is responsible for overseeing the prompt, equitable, and impartial investigation during the formal complaint process; however, extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes: The complexity and/or number of the allegations; The severity and extent of the alleged misconduct; The number of parties, witnesses, and other types of evidence involved; The availability of the parties, witnesses, and evidence; A request by a party to delay an investigation; The effect of a concurrent criminal investigation or proceeding; intervening holidays, College breaks, or other closures; good faith efforts to reach a resolution; or other unforeseen circumstances.
4. The TIXC or DTIXC will assign an Investigator and share the Investigator's name and contact information with the Complainant and the Respondent.
5. Immediately after the identity of the person who will conduct the investigation is determined and communicated to the parties, the Investigator, the Complainant, or the Respondent may identify to the TIXC or DTIXC in writing any real or perceived conflict of interest. The TIXC or DTIXC will carefully consider such statements and will assign a different individual as Investigator if it is determined that a material conflict of interest exists.

6. Investigations typically include interviews with the Complainant, the Respondent, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The College will give the Complainant and the Respondent written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
 - a. If, after a safety and risk analysis, the TIXC or DTIXC determines that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, the TIXC or DTIXC may recommend the Respondent be removed from the College's programs or activities. In such instances, the Respondent will be provided with a written notice of the reasons for the removal. Nothing in this policy precludes the College from placing a non-student employee Respondent on administrative leave during the pendency of the complaint process.
 - b. Upon notification of interim suspension (student) or interim administrative leave (employee), the party may appeal this interim status via email or mail a written appeal to the President within ten (10) business days of receiving official notice of the interim status. Appeals may not exceed seven (7) double-spaced pages on 8 ½ x 11 paper with one-inch margins and 11-point font. The President shall conduct a review of the record and issue a final written decision that describes the result of the appeal and the rationale for the result. The President's decision is final.
7. Interviews conducted as part of an investigation under this Procedure may be recorded by the College. Recordings not authorized by the College are prohibited.
8. Both parties have the right to be accompanied by an Advisor of their choosing during all stages of an investigation.
 - a. A party may elect to change Advisors during the process.
 - b. All Advisors are subject to the same rules:
 1. During the investigation, the Advisor's role is limited to providing advice, guidance, and support to the Complainant or Respondent. An Advisor is not permitted to act as a participant or advocate during the investigative process.
 2. Advisors are expected to maintain the privacy of the records shared with them.
 3. Advisors are expected to refrain from interfering with investigations.
 4. Any Advisor who oversteps their role or interferes during an investigation process will be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be asked to leave. The Title IX Coordinator determines whether the Advisor may return or should be replaced by a different Advisor.
 5. Note: Advisors must sign a Family Educational Rights and Privacy Act (FERPA) release to receive information related to a Title IX matter.
9. Prior to finalizing the Investigation Report, the Investigator will provide all parties an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the College does not intend to rely. The evidence will be provided in an electronic format or a hard copy.

The parties may submit a written response to the evidence within 10 business days after receipt of the evidence. The investigator considers any responses received from the parties and conducts any further investigation necessary or appropriate.

10. The Investigation Report shall fairly summarize the relevant evidence and must include the following items and information that is relevant to the allegations in the formal complaint:
 - a. the dates of the TIXC's or DTIXC's initial receipt of a report of alleged sexual harassment against the Complainant, intake meeting, and the filing of the formal complaint
 - b. a statement of the allegation(s), a description of the incident(s), the date(s) and time(s) (if known), and location of the alleged incident(s)
 - c. the names of all known witnesses to the alleged incident(s)
 - d. the dates that the Complainant, Respondent, and other witnesses were interviewed, along with summaries of the interviews
 - e. descriptions or summaries of any physical or documentary evidence that was obtained (e.g., text messages, emails, surveillance video footage, photographs)
 - f. any written statements of the Complainant, Respondent, or other witnesses
 - g. the response of College personnel and, if applicable, College-level officials, including any supportive measures taken with respect to the Complainant and Respondent

11. The Investigator shall provide a draft of the investigative report to the TIXC or DTIXC for review before the report becomes final. An electronic or hard-copy version of the final investigative report will be provided to each party (and each party's Advisor) concurrently.

H. DETERMINATION HEARING

1. At least 10 business days after the issuance of the Investigation Report, a Live Hearing will be conducted to determine outcome and resolution of the complaint. The parties and their Advisors, if any, will be notified of the date, time and location of the hearing.

2. **Hearing Officer/Decision-Maker**
 - a. Within 5 business days of the release of the Investigation Report to the parties, or as soon as practicable thereafter, the TIXC or DTIXC will appoint a Hearing Officer/Decision-Maker, who may be (but is not required to be) an individual not employed by the College, who will be responsible for conducting the Live Hearing and making findings regarding responsibility and, if applicable, recommend any necessary remedies and sanctions. The TIXC or DTIXC will provide a copy of the formal complaint and the Investigation Report, along with the parties' written responses to the Investigative Report, to the Hearing Officer/Decision-Maker.
 - b. Immediately after the identity of the person who will conduct the live hearing and act as the decision-maker is determined and communicated to the parties, the Hearing Officer/Decision-Maker, the complainant, or the respondent may identify to the TIXC or DTIXC in writing any real or perceived conflict of interest. The TIXC or DTIXC will carefully consider such statements and will assign a different individual as the Hearing Officer/Decision-Maker if it is determined that a material conflict of interest exists.

3. **Submission of Witnesses Lists**

Within 5 business days after receipt of the notice of the Hearing Officer/Decision-Maker, both parties may provide to the Hearing Officer/Decision-Maker a list of witnesses, if any, that they propose to be called to testify, and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute. Absent good cause, a party cannot include a witness on the party's pre-hearing witness list unless the witness was identified during the investigation. The Hearing Officer/Decision-Maker reserves the right to call relevant witnesses who may not have been included on a party's witness list.

4. Notice of the Live Hearing

The hearing shall be conducted promptly but no sooner than 10 business days after release of the Investigation Report. At least 10 business days prior to the Live Hearing date, the Hearing Officer/Decision-Maker will provide a separate notice to the Complainant, Respondent, and any other witnesses whose testimony the Hearing Officer/Decision-Maker deems relevant, requesting such individuals to appear at the hearing to determine responsibility. The notice shall set forth the date, time, and location for the individual's requested presence. The Hearing Officer/Decision-Maker shall provide, in the notice to the parties, the names of the witnesses that the Hearing Officer/Decision-Maker plans to call.

5. Failure to Appear

If any party fails to appear at the hearing if requested to do so, and such party was provided notice of the hearing as set forth above, then, absent extenuating circumstances, the Hearing Officer/Decision-Maker will proceed to determine the resolution of the complaint. For a party who fails to appear, the Hearing Officer/Decision-Maker will need to rely solely on the non-appearing party's version of events based as per the formal complaint, prior statements, and/or the Investigative Report.

6. Option for Virtual Presence

Live hearings may be conducted with parties present in the same geographic location or, at the College's discretion, any or all parties and witnesses may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may request not to be in the same room as the other party. If any party makes such a request, then both parties will be required to attend the hearing from a location or room different from where the Hearing Officer/Decision-Maker is sitting. If the hearing is virtual, or there is a request for separate rooms at a physical location, the College will ensure that all participants are able to simultaneously see and hear the party or the witness answering questions. Instructions will be provided for accessibility prior to the hearing date.

7. Recordings

An audio or audio-visual recording will be created of the live hearing and will be made available for inspection and review at any party's request.

8. Advisors

Both the Complainant and Respondent may be accompanied by an Advisor during the hearing. The Advisor's role at the hearing shall consist of (1) providing private advice to the party he/she is supporting and (2) questioning the opposing party and other witnesses because the parties are not permitted to ask questions or cross-examine the other party or witnesses during the hearing. The Advisor can be anyone, including an attorney. A party may arrange for

the party's Advisor of choice to attend the hearing at the party's own expense. Alternatively, the College will select and provide an Advisor to assist a party at the hearing to determine responsibility, without fee or charge, upon a request for an Advisor at least 5 business days prior to the date of the hearing. In either scenario, the Advisor may only participate in the hearing to the extent allowed under this policy.

9. Evidentiary Matters and Procedure

The parties, through their Advisors, shall have an equal opportunity to question the opposing party and other witnesses, including fact and expert witnesses, and present relevant evidence, including exculpatory and inculpatory evidence. Formal rules of evidence will not be observed during the hearing. The Hearing Officer/Decision-Maker will conduct the initial questioning of witnesses prior to the questioning by an Advisor. The Hearing Officer/Decision-Maker will make all determinations regarding the order of witnesses, relevancy of questions, and the evidence to be considered or excluded during the hearing and decision-making process. The Hearing Officer/Decision-Maker may, in his or her discretion, choose to call the Investigator for the purpose of providing an overview of the investigation and findings.

10. Cross-Examination During the Live Hearing

Each party's Advisor is permitted to question the opposing party and the other witnesses, so long as the questions are relevant and not duplicative of the questions posed by the Hearing Officer/Decision-Maker. The questions may include challenges to credibility. No other questioning or speaking participation by an Advisor will be allowed. A party may not examine a party or witness directly; rather, a party must utilize the services of an Advisor for the purpose of posing questions to another party or witness.

11. Relevancy of Questions

The Hearing Officer/Decision-Maker will make determinations regarding relevancy of questions before a party or witness answers. If a determination is made to exclude the question based on relevancy, the Hearing Officer/Decision-Maker will provide an explanation of why the question was deemed irrelevant and excluded.

12. Advisor Notification and Expectations

A party should notify the Hearing Officer/Decision-Maker at least 5 business days in advance of the hearing if the party will be accompanied by an Advisor. The Hearing Officer/Decision-Maker may disallow the attendance of any Advisor if, in the discretion of the Hearing Officer/Decision-Maker, such person's presence becomes disruptive or obstructive to the hearing or otherwise warrants removal. Advisors will not be permitted to badger or question the opposing party or any witness in an abusive or threatening manner. Absent accommodation for a disability, the parties may not be accompanied by any other individual during the hearing process except as set forth in this policy. College officials may seek advice from the College Attorney on questions of law, policy, and procedure at any time during the process.

13. Prior Sexual Conduct

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 someone other than the Respondent committed the

conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

14. Refusal to Submit to Cross-Examination

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer/Decision-Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Officer/Decision-Maker cannot draw an inference about the determination of responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

15. Confidentiality and Disclosure

To comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the complaint process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the formal complaint, investigative report, evidentiary materials, notices, and prehearing submissions), recordings of the hearing, and documents, testimony, or other information used at the hearing may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law. Records with a legally recognized privilege, such as medical treatment records, may not be used unless the individual or entity who holds the privilege waives the privilege. Any waiver must be written and made in advance of a hearing.

16. Decision of the Hearing Officer/Decision-Maker and Standard of Evidence

Following the conclusion of the hearing, the Hearing Officer/Decision-Maker will determine whether the evidence establishes that it is more likely than not that the Respondent committed a violation of this policy. In other words, the standard of proof will be the preponderance of the evidence. This standard applies to complaints against both students and employees. Other standard Rules of Evidence do not apply in complaint hearings under these procedures. In reaching the determination, the Hearing Officer/Decision-Maker will objectively and thoroughly evaluate all relevant evidence, and reach an independent decision, without deference to the Investigation Report.

17. Written Determination of Responsibility

- a. As soon as practicable following the Live Hearing (and ordinarily within 10 business days thereafter), the Hearing Officer/Decision-Maker evaluates all relevant evidence and reaches a determination regarding responsibility.
- b. The Hearing Officer/Decision-Maker will send simultaneous notification of the decision to both parties and their Advisors.
- c. The notification, where applicable, will include the following information:
 1. a summary of the allegations
 2. description of the procedural steps taken by the College to investigate and reach a determination of responsibility
 3. findings of fact supporting the determination
 4. conclusions regarding the application of College policies to the facts

5. a statement of and rationale for the result as to each allegation, including a determination of responsibility
6. whether remedies/sanctions designed to restore or preserve equal access to an education program or activity will be provided to the Complainant
7. any disciplinary sanctions the College recommends or imposes
8. the College's appeal procedures

18. Remedies/Sanctions

- a. When it is determined that a Respondent is responsible under this policy, Remedies/Sanctions may be issued as part of the final determination in order to:
 1. bring an end to the violation in question
 2. reasonably prevent a recurrence of a similar violation, and
 3. remedy the effects of the violation
- b. Remedies/Sanctions for a finding of responsibility will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this policy, or both, and may include:

Tier 1 Remedies/Sanctions:

Employee

- Performance Improvement Plan
- Required Counseling
- No Contact Order
- Required Training/Education
- Other consequences deemed appropriate

Students

- Verbal Warning
- Reprimand
- General or Restrictive Probation
- Administrative withdrawal from a course without refund
- Required Counseling
- No Contact Order
- Required Training/Education
- Other consequences deemed appropriate

Tier 2 Remedies/Sanctions:

Employee

- Official Warning
- Official Reprimand
- Disciplinary Probation
- Suspension
- Disciplinary Demotion
- Dismissal

Student

- Suspension
- Expulsion

- c. Remedies/Sanctions may be appealed pursuant to the procedure for appeals set forth in this policy.

I. DETERMINATION APPEALS

1. The Complainant or the Respondent may appeal for one of the following permissible grounds:
 - a. a procedural irregularity that affected the outcome of the decision;
 - b. there is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter;
 - c. the TIXC or DTIXC, Investigator(s), or Hearing Officer/Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents in general or against an individual Complainant or Respondent that affected the outcome
2. Parties must submit via email or mail a written appeal to the President of the College within ten (10) business days of receiving official notice of the decision giving cause for the appeal. Appeals may not exceed seven (7) double-spaced pages on 8 ½ x 11 paper with one-inch margins and 11-point font. The President will also receive the written record for the case.
3. Failure to submit a timely and proper appeal will constitute a waiver of any appeal rights related to this matter.
4. The person making the appeal may, in writing, withdraw their appeal at any time, which will constitute a waiver of any future appeal rights related to this matter, and result in the determination being final.
5. For an appeal of Tier 1 Remedies/Sanctions, the President shall conduct a review of the record and issue a final written decision that describes the result of the appeal and the rationale for the result. The President's decision is final.
6. For an appeal of Tier 2 Remedies/Sanctions, a Live Hearing will be scheduled before the President, with the President serving as the Hearing Officer/Decision-Maker. The hearing and appeal determination will follow the same procedures as set forth in this policy. The President's determination may be appealed to the College's Board of Trustees.
7. An Appeal to the Board of Trustees must be in writing and made through the President within ten (10) business days of receiving notice of the President's appeal determination. Appeals may not exceed seven (7) double-spaced pages on 8 ½ x 11 paper with one-inch margins and 11-point font.
8. The President will forward the written appeal to the Chair of the Board of Trustees, and include the written record of the case, including the President's appeal determination notice.
9. The Chair of the Board of Trustees will appoint a 3-member Board Panel to conduct a hearing of the appeal. The Chair of the Board of Trustees will also appoint one of the three members to be the Panel's Chair.

10. The Live Hearing will be scheduled before the 3-member Board panel, and the members of the Board panel will serve as the Hearing Officer/Decision-Makers. The hearing and appeal determination will follow the same procedures as set forth in this policy. The 3-member Board Panel's decision is final.

J. STATEMENTS OF PROHIBITION

1. Retaliation against any person participating in connection with a complaint under this policy is strictly prohibited. Retaliation includes, but is not limited to, any form of intimidation, coercion, threats, punitive actions, reprisal (acts of vengeance) or harassment. Retaliation is a serious violation and should be reported immediately. Reports of retaliation will be addressed through this procedure and/or other applicable College procedures.
2. Willfully making a false report of sexual harassment or submitting false information as part of any proceedings is a violation of College policy and is a serious offense. Any person who makes or participates in making a false or frivolous report of sexual harassment, retaliation, or other misconduct will be subject to disciplinary action up to and including dismissal or expulsion.

K. TRAINING

1. Title IX Coordinators/Deputy, Hearing Officer/Decision-Makers, Investigators, involved in any informal or formal resolution processes shall receive annual relevant training pursuant to this Policy and Procedures.
2. Each year, all students and employees will receive an electronic copy of this Policy sent to their College email address of record.
3. The College will also provide prevention and awareness training of Violence Against Women Act (VAWA) offenses (i.e., domestic violence, sexual assault, dating violence, and stalking) and the information contained in the Policy and Procedures will be offered to students and employees.

L. RECORDKEEPING

The College maintains all records of Title IX proceedings and all materials used to train Title IX personnel for at least seven (7) years.

M. DEFINITION OF TERMS

The following definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress minority viewpoints in the academic setting. Because a student's speech or expression may be deemed offensive by others, it does not mean it constitutes discrimination or harassment. Speech or expression should be viewed in its context and totality using the standard that the alleged victim subjectively views the conduct as discrimination or harassment and that the conduct is so objectively severe or pervasive that a reasonable person would agree that the conduct is discriminatory or harassing.

Actual Knowledge: notice of sexual harassment (including allegations of sexual harassment) to the College's Title IX Coordinator, Deputy Title IX Coordinator, or any College Official who has authority to institute corrective measures on behalf of the institution.

Advisor: a person who can assist and support a Complainant or Respondent in understanding and navigating the investigation process, including attending hearing and asking questions of the other party or witness on behalf of the Complainant or Respondent.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment, as defined by Title IX.

Consent: explicit approval to engage in sexual activity demonstrated by clear actions or words. This decision must be made freely and actively by all participants. Non-verbal communication, silence, passivity or lack of active resistance does not imply consent. In addition, previous participation in sexual activity does not indicate current consent to participate and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent has not been obtained in situations where the individual is forced, pressured, manipulated or has reasonable fear that they will be injured if they do not submit to the act; is incapable of giving consent or is prevented from resisting due to physical or mental incapacity (including being under the influence of drugs or alcohol); or has a mental or physical disability which inhibits his/her ability to give consent to sexual activity.

Dating Violence: crimes of violence against a person with whom the person has or had a social relationship or a romantic or intimate relationship.

Days: Refers to working or business days, rather than calendar days, unless otherwise specified.

Decision-Maker: a person who conducts an objective evaluation of all relevant evidence and determines responsibility by applying the standard of evidence. Makes decisions regarding process appeals.

Domestic Violence: crimes of violence against a current or former spouse or intimate partner; a person with whom the student shares a child in common; a person with whom the student cohabitates or has cohabitated as a spouse or intimate partner; a person similarly situated to the student as a spouse under local domestic laws; or any person who is protected under local domestic laws of the jurisdiction.

Education Program or Activity: for purposes of these Procedures, this means any locations, events, or circumstances over which the College exercised substantial control over both the Respondent(s) and the context in which the alleged sexual harassment occurs.

Employee: a person who is hired and employed by the College to perform certain tasks in exchange for wages or a salary. Third-party vendors are not considered employees of the College as per this definition for Title IX purposes.

Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator or the Deputy Title IX Coordinator alleging sexual harassment against a Respondent and requesting the College investigate the allegation(s). A Formal Complaint initiates a formal complaint process in which parties are entitled to due process protections.

Informal Resolution: a resolution reached regarding an allegation of sexual harassment without the filing of a Formal Complaint. Informal Resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution. Informal Resolution cannot be used for a student's allegation of sexual harassment against a College employee.

Investigator: a person responsible for conducting investigations into allegations involving allegations of sexual harassment under Title IX.

Party: The Complainant or Respondent.

Preponderance of the Evidence: A standard of proof where the conclusion is based on facts that are more likely true than not.

Respondent: an individual who has been reported to be the committer of conduct that could constitute sexual harassment, as defined by Title IX.

Retaliation: to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under these Procedures.

Sexual Assault: an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the [FBI's Uniform Crime Reporting system](#).

Sexual Harassment: quid pro quo harassment; unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity, including conduct based on sex stereotyping; or any instance of sexual assault, dating violence, domestic violence, or stalking. Quid pro quo harassment is a person having power or authority over another and conditioning an educational or employment benefit or service or access to receiving the educational or employment benefit or service upon a person's participation in unwelcome sexual conduct.

Stalking: engaging in a course of conduct directed to a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Student: a person who has applied to the College or is currently enrolled in credit or non-credit courses offered by the College at any location or online.

Supportive Measures: individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party that are designed to ensure equal educational access, protect safety, or deter sexual harassment. Examples of support measures are counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on

contact between the parties, leaves of absences, increased security and monitoring of certain areas of the College, and other similar measures.

Title IX Coordinator and/or Deputy Title IX Coordinator: a person(s) who is designated by the College to coordinate the College's compliance with Title IX.

Witness: a person who may have knowledge of facts or circumstances concerning a claim of sexual harassment or misconduct under Title IX.

History

Issued: 4/15/97: Title: "Sexual Harassment."

Revised: 7/1/16: Changed title to "Sexual and Other Unlawful Harassment or Misconduct." Referenced College policy and relevant federal laws including: Equal Opportunity, Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Clery Act and Violence Against Women Act (VAWA); added references to Title IX, the Clery Act and Violence Against Women Act (VAWA), and other unlawful harassment or misconduct; clarified statements and expectations related to sexual harassment and misconduct; added procedural statements regarding reporting and investigations.

Revised: 9/26/16 – Clarified "reasonable person" standard and added the qualifiers "severe, persistent, and pervasive" related to hostile environment. 9/18/17: Editorial: Added immunity statement under Section C. Title IX.

Revised: 11/16/20: Changed title to: "Title IX and Sexual Harassment." Revised as per the recent Title IX regulations issued by the Department of Education. Due to the significant changes, the former policy entitled "Sexual and Other Unlawful Harassment or Misconduct" underwent a complete rewrite with the title changed to *Title IX and Sexual Harassment*.