

Chapter: General Administration

Modification No. 006Subject: **Sexual Misconduct**

I. Policy Statement

It is the policy of Montgomery College to establish and maintain an environment in which all members of the Montgomery College community can work or participate in College education programs and activities free from all forms of sexual misconduct. Sexual misconduct is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972. In addition, some forms of sexual misconduct violate the criminal laws of the State of Maryland. Sexual misconduct in any form will not be tolerated by Montgomery College. The College will take immediate action to preserve and restore equal educational access when the College has actual knowledge of sexual misconduct.

II. Definitions

For purposes of this Policy, “sexual misconduct” is an umbrella term that encompasses various types of prohibited conduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The President is authorized and directed to establish procedures to define other terms relevant to this Policy, including but not limited to: “sexual harassment”, “sexual assault”, “domestic violence”, “dating violence”, and “stalking”.

III. Applicability

All students and employees of the College must comply with this Policy. Sexual misconduct is prohibited between students, between employees, between students and employees, and by students or employees against contractors, vendors, or other individuals whose relationship to the student or employee is through the College’s facilities, programs or activities. Similarly, the College will not tolerate sexual misconduct by College contractors, vendors, or other third parties, including visitors and guests to the College whose relationship to the victim is through the College’s facilities, programs, or activities. This Policy applies regardless of the sex, sexual orientation, or gender identity of either the perpetrator or the victim of the sexual misconduct. This Policy applies to sexual misconduct (i) that occurs on College premises, including any property owned or leased by the College (including College buses) or that the College has permission to occupy for purposes of conducting a College-sponsored program or event; (ii) that occurs in connection with any College-sponsored, College-recognized, or College-approved activities within the United States (e.g., off-campus education programs and activities such as College-sponsored field trips, athletic team travel, and events for officially recognized College clubs that occur off-campus, and social activities for employees sponsored by the College or relating to the business of the College); (iii) that occurs during business travel in the United States or otherwise in connection with College-related business; or (iv) sexual harassment on- or off-campus during any college-sponsored activity that impacts equal educational opportunity or access. All incidents of sexual misconduct should be reported so that the College may determine whether the conduct falls within the scope of this Policy.

IV. Reporting and Confidentiality

All members of the Montgomery College community may report allegations of sexual

misconduct at any time, but are encouraged to make such reports promptly in order to maximize the College's ability to respond and take appropriate action, including to obtain evidence and to conduct a prompt and equitable investigation.

Students may report alleged sexual misconduct to the Title IX Coordinator or to any "Mandated Reporter," which includes any College administrator, supervisor, faculty member, public safety officer, coach, or trainer. Employees and other members of the College community may report sexual misconduct to the Title IX Coordinator or the Director of Employee and Labor Relations, and employees may also report sexual misconduct to their supervisor. A Mandated Reporter, the Director of Employee and Labor Relations, and any other employee who receives a report of sexual misconduct must promptly relay such report to the Title IX Coordinator. No employee is authorized to investigate or resolve reports of sexual misconduct without the involvement of the Title IX Coordinator.

The College's designated Title IX Coordinator can be reached by email at TitleIX@montgomerycollege.edu.¹ The Title IX Coordinator is available to meet on any campus by appointment. Members of the College community may contact the Title IX Coordinator in order to seek information about courses of action available to resolve reports or complaints that involve sexual misconduct; to file a formal complaint; to get information about available resources and supports services available to victims of sexual misconduct; and, to ask any questions concerning College Policies and Procedures relating to sexual misconduct.

Certain College employees will be designated Confidential Resources for purposes of this policy. Confidential Resources are not considered to be Mandated Reporters – that is, upon receipt of a report of alleged sexual misconduct, Confidential Resources are not required to notify the Title IX Coordinator. An individual seeking support or guidance with respect to an alleged incident of sexual misconduct may contact any Confidential Resource, who will normally keep private the individual's identity and any other information concerning the incident.

The College recognizes that allegations of sexual misconduct are a sensitive subject for all parties involved and is committed to maintaining the privacy of the parties involved to the fullest extent possible, consistent with applicable law and the need for investigation and resolution. The College, through the Title IX Coordinator, may sign a formal complaint to initiate the investigation and formal resolution process even when the individual making a report of sexual misconduct requests anonymity or requests that no action be taken. Thus, absolute confidentiality cannot be guaranteed. In all cases, the College will take care to protect the identity of the parties through processes that provide for discussion of the allegations only among those who have a legitimate administrative, investigative, or legal need to know.

V. College Aid to Victims of Sexual Misconduct

The President is authorized and directed to establish procedures to provide victims of

¹ The President is authorized to change the designation of the Title IX Coordinator by a procedure that provides the name and contact information of the Title IX Coordinator similar to the information provided in this Policy. Upon adoption of the procedure with this information and the posting of notice of the change to the College's web site, this Policy may be modified by direction of the President to substitute the new information about the Title IX Coordinator without the need for further action of the Board of Trustees.

sexual misconduct with reasonable accommodations (e.g., changes in academic, transportation and/or working situations) and/or supportive measures that will be made available upon a report of sexual misconduct to a victim of sexual misconduct, regardless of whether the victim chooses to report the sexual misconduct to campus security or local law enforcement.

VI. Investigation

All reports of sexual misconduct will be taken seriously and investigated as appropriate. The President is authorized and directed to establish procedures for the investigation of such reports, which shall provide for a prompt, thorough, and impartial process.

VII. Time Frame

The College strives to investigate all complaints within sixty (60) days after the filing of a complaint. Actual resolution time may vary depending on many factors, including but not limited to, the complexity of the investigation and the severity and extent of the alleged misconduct.

VIII. Sanctions

It is presumed that a Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. Individuals found to have committed sexual misconduct in violation of this Policy will be subject to disciplinary action in accordance with applicable College policies and procedures and/or collective bargaining agreements.

Employees found in violation of this Policy are subject to disciplinary action in accordance with the applicable College policies and procedures for disciplinary action and discharge (34002 and 34003), or, for bargaining unit members, the applicable procedures in the collective bargaining agreement. Sanctions will be based on the circumstances and nature of the violation, ranging from a reprimand up to and including termination of employment. Students found in violation of this Policy are subject to disciplinary action in accordance with procedures set forth in the Student Code of Conduct (42001). Sanctions will be based on the circumstances and nature of the violation and include, but are not limited to, a warning, disciplinary probation, community service, participation in sexual misconduct education programming, suspension and dismissal from the College. In the event of sexual misconduct by a third party against a College student or employee, the College will take appropriate action within its control to address the misconduct and prevent its recurrence, including but not limited to, referring to local law enforcement to issue a "No Trespass" notice denying access to the College's buildings and grounds.

As required or appropriate, parties will be informed of the outcome of any resolution process based on a violation of this Policy.

Persons who commit sexual misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties as a result of related legal proceedings.

IX. Evidentiary Standard

In any investigation and/or disciplinary proceeding concerning an alleged violation of this Policy, the finding will be determined by a preponderance of the evidence. The burden of collecting evidence and proving a violation of policy is the responsibility of the College

and not the individuals.

X. Good Faith Reporting

Allegations of sexual misconduct are extremely serious, with potential for great harm to the accused if ill-conceived or made with malice. An individual found to have knowingly filed a false allegation may be subject to separate appropriate disciplinary action. A complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of sexual misconduct.

XI. Retaliation

The College prohibits retaliation by anyone in the College community against an individual because the individual reports or complains about sexual misconduct or participates in the College's investigation or proceedings related to an allegation of sexual misconduct. When the College is aware of possible retaliation, it will take immediate and appropriate steps to investigate. Students or employees who commit retaliation in violation of this Policy are subject to appropriate disciplinary action. The Complainant or participants in any report or investigation of sexual misconduct who believe they have experienced retaliation in violation of this Policy should immediately report such conduct to the Title IX Coordinator.

XII. Education

Education is a key element of this Policy. Notice of this Policy will be provided to all students during admissions and all employees during onboarding. The College will provide education and information, as appropriate, for students and employees to enhance understanding and increase awareness of the College's Sexual Misconduct Policy and Procedures. Sufficient periodic training will be conducted for Mandated Reporters and for those involved in the investigation and resolution of complaints and appeals, as determined by the President. Records and verification of all training will be maintained by the Title IX Coordinator and published on the Title IX website. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to increase knowledge and share information and resources to prevent sexual misconduct, promote safety, and reduce perpetration. Some goals to be achieved through education are: (a) ensuring that all individuals are aware of their rights; (b) notifying individuals of conduct that is proscribed; (c) informing employees, students, and other members of the college community, including contractors, about the proper way to recognize and address complaints involving a violation of this Policy; (d) preventing issues that this Policy addresses, and; (e) identifying the necessary steps for preventing sexual misconduct and addressing its effects.

XIII. The President is authorized and directed to establish procedures to implement this Policy.

Board Approval: December 15, 2014; September 21, 2015; June 17, 2019 (Administrative correction); June 22, 2020; January 25, 2023

Chapter: General Administration

Modification No. 007Subject: **Sexual Misconduct**

I. Introduction

A. Montgomery College is committed to establishing and maintaining an environment in which all members of the Montgomery College community can work and participate in College education programs and activities free from all forms of sexual misconduct, as defined in Section II below. Sexual misconduct will not be tolerated and the College will consider any violation as a significant act of misconduct that will result in disciplinary action. When made aware, the College will take immediate action to stop the misconduct, prevent its recurrence, and remedy its effects. The resolution processes described herein relating to reports of sexual misconduct will be prompt, thorough, and impartial and provide a meaningful opportunity for each party to be heard. The process will be conducted by College officials who, at minimum, receive annual training on issues related to sexual misconduct.

B. Complainant and Respondent Rights

1. Treatment with dignity, respect, and sensitivity by the official of the College during all phases of the disciplinary process.
2. A fair and impartial investigation.
3. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the complainant and respondent to be heard, including the provision of a live hearing.
4. Availability of Supportive Measures, regardless of whether a formal complaint is filed.
5. Timely written notice of:
 - a. The reported violation, including date, time, and location of the alleged violation;
 - b. The availability of informal resolution options;
 - c. The range of potential sanctions associated with the alleged violation;
 - d. The parties' rights and responsibilities under the sexual misconduct policy and information regarding other civil and criminal options;
 - e. The date, time, and location of each hearing, meeting, or interview that the parties are required or permitted to attend;
 - f. A final determination made by the College regarding whether or not a violation occurred and the basis for the determination;
 - g. Any sanction imposed; and
 - h. The right to appeal and a description of the appeal process.
6. Participation in the disciplinary proceedings, including:

- a. Access to the evidence regarding the incident obtained by the College during the investigation or considered by the College, with personally identifiable or other information redacted as required by applicable law;
 - b. Offering testimony during the proceedings;
 - c. Submitting evidence, witness lists, and suggested specific questions to be posed to the other party(ies) involved in the disciplinary proceedings;
 - d. Providing and reviewing testimony electronically or in a way in which the parties are not required to be in the physical presence of the other;
 - e. Reviewing and providing written responses to the investigation report; and
 - f. Appealing a determination or sanction.
- C. Nothing in this Procedure shall supersede the legal obligations of a College employee or the College to comply with mandatory reporting laws, such as those applicable to sexual or other abuse of minors. In all cases, College employees and the College will comply with Montgomery College Policy 95005-Protection of Minors.

II. Applicability

Sexual misconduct is prohibited between students, between employees, between students and employees, and by students or employees against contractors, vendors, or other individuals whose relationship to the student or employee is through the College's facilities, programs, or activities. Similarly, the College will not tolerate sexual misconduct by College contractors, vendors, or other third parties, including visitors and guests to the College, whose relationship to the victim is through the College's facilities, programs, or activities.

- A. These procedures apply regardless of the sex, sexual orientation, or gender identity and expression of either the perpetrator or the victim of sexual misconduct.
- B. These procedures apply to sexual misconduct that:
 - 1. occurs on College premises, including any property owned or leased by the College (including College vehicles) or that the College has permission to occupy for purposes of conducting a College-sponsored program or event;
 - 2. occurs in connection with any College-sponsored, College-recognized, or College-approved activities within the United States (e.g., off-campus education programs and activities such as College-sponsored field trips, athletic team travel, and events for officially recognized College clubs that occur off campus, and social activities for employees sponsored by the College or relating to the business of the College);
 - 3. occurs during business travel within the United States or otherwise in connection with College-related business; and,
 - 4. sexual harassment on or off campus in any College program or activity

that impacts equal educational access.

- C. All incidents of sexual misconduct should be reported so that the College may determine whether the conduct falls within the scope of the Policy and may respond appropriately under these procedures.

III. Definitions

The following capitalized defined terms are used throughout the Procedure:

- A. Advisor – A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- B. Complainant - refers to an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- C. Confidential Resource – specific College employees whose role under this procedure is limited to providing confidential support and guidance to any individuals who wish to discuss alleged incidents of sexual misconduct. Confidential resources are specific College employees who are not considered to be Mandated Reporters and therefore are not required to notify the Title IX Coordinator (or alternatively, if the sexual misconduct is by or against an employee, the Director of Employee and Labor Relations) upon receipt of a report of sexual misconduct.
- D. Consent – a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make rational, reasonable judgment can give Consent. Consent may be expressed either by words and/or by actions as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity. It is the responsibility of the person who wants to engage in sexual activity to ensure that they have consent from the other party, and that the other party is capable of providing consent.
 - 1. Lack of protest or resistance is not consent, nor may silence, in and of itself, be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding.
 - 2. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - 3. Previous relationships, including past sexual relationships or prior consent cannot imply consent to future sexual acts.
 - 4. Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
 - 5. In order to give effective consent, one must be of legal age, as defined by applicable Maryland law.

Sexual activity that is forced or coerced is by definition non-consensual. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure used to obtain consent. Frequency, intensity, isolation, and duration of the behavior will be considered in making a determination of whether coercion occurred. When a party makes clear that they do not want to engage in sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercing someone into sexual activity violates this Policy in the same way as physically forcing someone into sex.

It is a violation of Policy 21001 to engage in sexual activity with someone whom one knows to be — or based on the circumstances should reasonably have known to be — mentally or physically incapacitated. To be incapacitated means that a person's decision-making ability is impaired such that they lack capacity to understand the "who, what, where, why, or how" of their sexual interaction. Incapacitation may result from sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of drugs or alcohol.

- E. Corrective Action – action(s) recommended by the Hearing Officer in consultation with appropriate administrator to be taken to sanction the Respondent and provide appropriate remedies to the Complainant, if the Hearing Officer concludes that there has been a violation of the College's Sexual Misconduct Policy.
- F. Dating violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- G. Domestic violence – encompasses a broad range of behaviors, including Sexual Assault, physical abuse and other forms of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant, or by any other person against an adult or youth Complainant protected from those acts by domestic or family violence laws of Maryland.
- H. Formal Complaint – a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of

sexual harassment. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator, or through the [Sexual Misconduct Report form](#).

- I. Formal Resolution – one of several available routes for resolution of allegations of sexual misconduct under this Procedure. Formal Resolution involves a prompt, fair, and impartial fact-finding Investigation and live hearing.
- J. Incapacitated - an individual who is Incapacitated is unable to give Consent to sexual contact. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to sexual contact. Alcohol or drug use is one of the prime causes of Incapacitation. However, a person is not incapacitated merely because they have been drinking or using drugs. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:
 - 1. making decisions about the potential consequences of sexual contact;
 - 2. appraising the nature of one's own conduct;
 - 3. communicating Consent to sexual contact; or
 - 4. communicating unwillingness to engage in sexual contact.
- K. Informal Resolution – a remedies-based, non-judicial style approach designed to address allegations of sexual misconduct without taking disciplinary action against a Respondent. Informal Resolution may not be appropriate for resolving allegations of some types of sexual misconduct.
- L. Initial Title IX Intake– an assessment, conducted by the Title IX Coordinator upon receipt of a report of an alleged violation of Policy 21001 - Sexual Misconduct, to provide an integrated and coordinated response to a report of sexual misconduct.
- M. Supportive Measures – individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- N. Investigation – a prompt and thorough process for providing a fair and reliable means of gathering relevant and factual information in the course of Formal Resolution.
- O. Investigator – the College official, or designee, responsible for conducting investigations of reports of sexual misconduct. The College may engage internal or external individuals who are trained to conduct the resolution processes described in these procedures.
- P. Hearing Officer - is a "presiding officer" in a full hearing for the purpose of conducting a full adjudicative proceeding under this policy.

- Q. Mandated Reporter - College employees who have the responsibility to notify the Title IX Coordinator when they are made aware of a student or employee experiencing sexual misconduct. Mandated Reporters do not have the Authority to implement corrective action or resolve a report of sexual misconduct.

For student Complaints, Mandated Reporters are:

- Instructional Faculty and Faculty Department Chairs,
- Coaches,
- Athletic trainers,
- Administrators (including but not limited to the Title IX Coordinator),
- Campus Public Safety Officers, and

For employee Complaints, Mandated Reporters are:

- Administrators (including but not limited to the Title IX Coordinator and the Director of Employee Relations, Diversity, and Inclusion),
- Supervisors, and
- Campus Public Safety Officers

- R. Respondent – refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- S. Retaliation – Intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by title IX..
- T. 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. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
- U. Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following:
1. An employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
 2. unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or

3. any instance of sexual assault, dating violence, domestic violence, or stalking.
- V. Sexual Misconduct – is an umbrella term that encompasses Dating Violence, Domestic Violence, Sexual Violence, Sexual Harassment, Sexual Assault, and Stalking. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by any person, regardless of gender identity, and can occur between people of the same or different sex, sexual orientation, or gender expression.
- W. Support Person - an individual age eighteen (18) or older who is not a Complainant or Respondent to the alleged misconduct and who serves as a silent and non-participating presence during any part of the processes under this Procedure. The role of the Support Person is solely to observe and provide moral support to a Complainant or Respondent in a way that does not disrupt or delay the process.
- X. Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- Y. Third-Party Witness - an individual who may have relevant direct or circumstantial knowledge or information about the alleged misconduct.
- Z. Title IX Coordinator – the College administrator who oversees the College's centralized review, investigation, and resolution of reports of sexual misconduct. The Coordinator also oversees the College's overall compliance with Title IX. The Title IX Coordinator is responsible for:
1. providing oversight of the investigation and resolution of all reports of sexual misconduct;
 2. recommending updates to the College's policies and procedures related to sexual misconduct;
 3. designing and/or providing or overseeing training on sexual misconduct and the implementation of the College's 21001 - Sexual Misconduct Policy and Procedure;
 4. advising any individual, including a Complainant, a Respondent, or a third party, about the courses of action available at the College, both informally and formally, and in the community;
 5. implementation of supportive measures

6. providing assistance to any College employee or student regarding how to respond appropriately to a report of sexual misconduct;
7. monitoring full compliance with all procedural requirements and time frames outlined in this Procedure; and,
8. training, prevention, and education efforts and periodic reviews of climate and culture.

The College's current Title IX Coordinator is:

Sarah Martin
9221 Corporate Blvd.
Rockville, MD 20850
240-567-7394
TitleIX@montgomerycollege.edu

IV. Confidential Resources

Generally, it is not confidential when a person reports Sexual Misconduct. If a person desires to keep an incident of Sexual Misconduct confidential, they should speak with individuals who have professional or legal obligations to keep communications confidential. When seeking advice and support, persons should always consider whether they want to discuss their concerns with a confidential resource. Unless there is an imminent threat to health or safety or other basis for disclosure, such as child abuse, confidentiality applies when persons seek services from the following resources.

A. Internal Confidential Reporting

1. Certain College employees have been deemed Confidential Resources for purposes of this Procedure:
 - a. For Students (contact a counselor directly):

Rockville Counseling Department
240-567-5063 or 240-567-4104

Germantown Counseling Department
240-567-7734

Takoma Park/Silver Spring Counseling Department
240-567-1480
 - b. For Employees:

Office of the Ombuds
240-687-6199
ombuds@montgomerycollege.edu
2. Confidential Resources may need to make reports or a disclosure as required by the Jeanne Clery Act. Such reporting for purposes of the Clery Act does not require a Confidential Resource to reveal an

individual's identity.

3. Discussing an alleged incident of sexual misconduct with a Confidential Resource will not lead to an investigation or resolution of the incident. Confidential Resources do not have the authority to establish supportive measures or take corrective action.

B. External Confidential Reporting

Individuals who are seeking information and support may also contact the following organizations. Please note, however, that disclosures or reports made to any of these organizations may not be required to be kept confidential as a matter of law.

1. Resource for Employees

Faculty Staff Assistance Program
1-800-935-9551 (24-hour hotline)
1-800-855-288 TTY

2. Community Resources for Students and Employees

Montgomery County Victim Assistance and Sexual Assault Program (VASAP)
1301 Piccard Drive, Suite 4100
Rockville, MD 20850
240-777-4357 (24-hour crisis hotline)
240-777-1347 TTY

V. Reporting Sexual Misconduct

The College encourages all individuals to make a report to the College and to local law enforcement whenever a crime may have been committed. The College will assist Complainant who wish to report sexual misconduct to law enforcement authorities. Reports to law enforcement and reports to the College can be pursued simultaneously.

A. Emergency Situations

1. If there is an immediate threat, if possible and necessary go to a safe location, and if injured, seek immediate medical attention.
2. Call 911 first, then call 240-567-3333 or go to the nearest Office of Public Safety:
 - a. Germantown Campus Public Safety
282 Science and Applied Sciences (SA) Building
 - b. Rockville Campus Public Safety
101 Counseling and Advising (CB) Building
 - c. Takoma Park/Silver Spring Public Safety
117 Charlene Nunley Student Services (ST) Building

B. Internal Reporting

1. A report of sexual misconduct may be made at any time. Members of the College community are encouraged to make reports promptly in order to maximize the College's ability to obtain evidence, identify potential witnesses, and conduct a thorough, prompt, fair, and equitable investigation.
 - a. Students may report alleged sexual misconduct:
 - i. to the Title IX Coordinator in person, by mail, or electronic mail;
 - ii. to any other Mandated Reporter, as defined in Section III; or
 - iii. through the online Formal [Sexual Misconduct Report Form](#)
 - b. Employees and other members of the College community who are not students may report sexual misconduct:
 - i. to the Title IX Coordinator in person, by mail, or electronic mail;
 - ii. to the Director of Employee and Relations;
 - iii. to any other Mandated Reporter, as defined in Section III; or
 - iv. through the online [Sexual Misconduct Report Form](#).
 - c. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
 - d. When the College has knowledge of sexual harassment, but the Complainant has chosen to not file a formal complaint, the Title IX Coordinator may sign a formal complaint initiating the formal resolution process. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during the resolution process.
2. Upon receiving a report, the College shall immediately inform the Complainant of available options about the involvement of law enforcement, including the Complainant's option to:
 - a. notify law enforcement authorities, including the campus Public Safety and local police;
 - b. decline to notify such authorities; and
 - c. be promptly assisted by the College, at the victim's request, in notifying local law enforcement authorities and in obtaining appropriate medical attention, including arranging transportation to the nearest hospital equipped with the Maryland State Police sexual assault evidence collection kit. In Montgomery County,

the only facility equipped with the Maryland State Police sexual assault evidence collection kit (SAFE) and specially trained forensic nurses is:

Shady Grove Adventist Hospital
Forensic Medical Unit
9901 Medical Center Drive
Rockville, MD 20850

This is the best option to ensure preservation of evidence that may assist in proving that a criminal offense occurred or may be helpful in obtaining a protection order.

3. The College will provide support that can assist each Complainant in making decisions about whether or not to request any particular course of action. To the extent possible and reasonable, the College will respect a Complainant's autonomy in deciding how to proceed. In this process, the College will balance the Complainant's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

4. Safe Harbor

To encourage reporting, an individual who reports sexual misconduct, either as a Complainant or a Third-Party Witness, will not be subject to disciplinary action by the College for a violation of the College's alcohol or drug use policies if:

- a. The violation occurred during or near the time of the alleged sexual misconduct violation;
- b. The individual is determined to have made the report or is participating in an investigation as a witness in good faith; and
- c. The College determines that the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

The College may, however, initiate an educational or employment discussion or pursue other remedies regarding alcohol or other drugs.

5. Obligations of "Mandatory Reporters"

A Mandatory Reporter must promptly notify the Title IX Coordinator of any report of Sexual Misconduct brought to their attention, including Public Safety. The Title IX Coordinator works collaboratively with the reporting entity, making every effort to operate with discretion and maintain the privacy of the individuals involved. The Mandatory Reporter is not authorized to take corrective action.

- C. External Reporting

In addition, members of the College community may also report instances of sexual misconduct to applicable federal, state, or local government agencies responsible for enforcing laws prohibiting sexual harassment against students or

employees. For more information please contact:

U.S. Department of Education
Office for Civil Rights
800-421-3481
OCR@ed.gov

Montgomery County Office of Human Rights
Compliance Section
240-777-8450
Human-Rights.Administration@montgomerycountymd.gov

D. Retaliation

The College prohibits retaliation by anyone in the College community against an individual because the individual reports sexual misconduct or participates in the College's processes related to an allegation of sexual misconduct as described in this Procedure. When the College is aware of possible retaliation, it will take immediate steps to investigate. Students or employees who commit retaliation in violation of Policy 21001 are subject to appropriate disciplinary action. A Complainant or other participant in any proceedings described in this Procedure who believes they have experienced retaliation in violation of Policy 21001 should immediately report such conduct to the Title IX Coordinator.

VI. Resolution Process

A. Initial Title IX Assessment

1. The College will meet with the Complainant to conduct an Initial Title IX Assessment when made aware of an allegation. For allegations involving students, the Title IX Assessment will be conducted by the Title IX Coordinator. For allegations involving employees, the Title IX Assessment will be conducted by the Director of Employee and Labor Relations. The Initial Title IX Assessment will:
 - a. Assess any immediate threats to the safety of the Complainant and the College community;
 - b. Inform the Complainant of their right to seek medical treatment and report to law enforcement;
 - c. Provide supportive measures to ensure equal educational access;
 - d. Determine whether the allegation could be a possible violation of the Sexual Misconduct policy
 - e. Provide the Complainant a copy of the Sexual Misconduct Policy and information on any College and community resources;
 - f. Discuss adjudication options and procedures for resolution;
 - g. Inquire about the Complainant's expressed preference regarding confidentiality and resolution, including any request that no further

action be taken; and

- h. Determine next steps, including possibility of informal resolution, initiation of a formal investigation, no cause, referral to appropriate disciplinary process, or referral for timely warning under the Clery Act.

2. Dismissal (Mandatory and Discretionary)

The College must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- a. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
- b. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent
- c. The conduct did not occur against a person in the United States
- d. At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the College's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the College

The College may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- b. The Respondent is no longer enrolled in or employed by the College
- c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

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

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

3. Allegations Made by a Third-Party Witness

- a. Any person may report sexual misconduct whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual misconduct, in person, by mail, by telephone, or by e-mail, using the contact information listed for

the Title IX Coordinator, or by any other means that results in the IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

- b. If a report has been made by a Third-Party Witness or other individual with knowledge of sexual misconduct but no report has been made by the individual against whom the violation is alleged to have been committed, the Title IX Coordinator will contact the individual against whom the violation is alleged to have been committed.
- c. The Title IX Coordinator will provide the individual an opportunity to make a formal complaint, review supportive measures, and to become a Complainant for purposes of this Procedure.
- d. The individual is not obligated to make such a report or to participate in the Initial Title IX Assessment or any subsequent processes.
- e. In addition, the individual may request that the College not investigate or take any action against the Respondent.

B. Supportive Measures

As part of the Initial Title IX Assessment, the College will make an immediate assessment of whether supportive measures are appropriate based on the particular circumstances. The College will treat complainants and respondents equitably, meaning that for a complainant, the College will offer supportive measures, and for a respondent, the College will follow the adjudication process before imposing disciplinary sanctions. These steps ensure the restoration or preservation of equal educational access of the parties, protect safety, and deter sexual harassment without unreasonably burdening the other party. Supportive measures are available to both parties and to the Complainant, regardless if a formal complaint is filed. When deemed in the best interests to protect the parties and the College community, the following interim remedies can be implemented with proper notice to both parties where appropriate:

- a. Providing information on available medical services;
- b. Access to counseling services and assistance in setting up initial counseling appointment, both on- and off-campus;
- c. Imposition of campus "No Contact Letter" (i.e., an official College directive that serves as a notice to an individual that they must not have verbal, electronic, written, or third-party communications with another individual);
- d. Change in work schedule or job assignment or reassignment to other work group/team, or an alternative supervisor/management relationship;

- e. Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter;
- f. Voluntary leave of absence;
- g. Providing an escort to ensure safe movement between classes and activities;
- h. Rescheduling of assignment(s) and/or examination(s) (in consultation with appropriate faculty);
- i. Providing alternative course completion options (with the agreement of the appropriate faculty);
- j. Change in class schedule, including the ability to take an "incomplete," drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty);
- k. Providing academic support services, such as tutoring;
- l. Any other remedy that can be tailored to protect the parties and achieve the goals of this policy; and
- m. Where a respondent poses an immediate threat to the physical health or safety of the complainant or the campus community, emergency interim withdrawal or College-imposed leave:
 - i. For students, emergency interim withdrawal pursuant to Campus Behavioral Intervention Teams - 42002; or
 - ii. For employees, College-imposed leave pursuant to Disciplinary Action and Suspension - 34002.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

All individuals are encouraged to report to the Title IX Coordinator concerns about failure of another individual to abide by any restrictions imposed by a supportive measure. The College will take immediate and responsive action to enforce the measure.

C. Grievance Process

The College resolves sexual misconduct complaints in one of two ways: informal resolution and formal resolution.

1. Informal Resolution – includes a variety of informal options for resolving reports.
2. Investigation and Formal Resolution – includes an investigation, review,

live hearing, outcome determination, and sanctions, if applicable.

D. Informal Resolution

The informal resolution process may be used at any point prior to reaching a determination of responsibility as long as a formal complaint has been filed and an employee is not the respondent. The College may use mediation or other informal mechanisms for resolving complaints related to a complaint alleging violation of this policy if:

1. All parties provide voluntary, written consent to use the informal process;
2. The College participates in the informal resolution by providing trained staff;
3. The alleged misconduct does not involve sexual assault or sexual coercion; and
4. All parties are provided with a written notice that includes:
 - a. The allegations.
 - b. 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.
 - c. At any time prior to agreeing to a resolution, the right of any party to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 - e. For the purposes of this procedure, a student employee is not considered an employee for purposes of informal resolution.

E. Investigation of a Formal Complaint

1. An investigation/formal resolution begins with the filing of a formal complaint by the Complainant or Title IX Coordinator.
2. The College shall initiate a prompt, thorough, and impartial Investigation to gather relevant information. Any subsequent disciplinary proceedings and resolutions shall be prompt and equitable and provide an opportunity for the Complainant and Respondent to be heard.
3. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.
4. A Notice of Investigation will be issued to both parties within ten (10) business days upon determination by the Title IX Coordinator that the alleged offense is within scope of the Policy and will include the following:
 - a. Summary of the allegation, including time, date, and location of

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- the alleged violation;
 - b. Potential violation(s) of Policy 21001 – Sexual Misconduct;
 - c. List of possible sanctions that may be imposed upon a finding that a violation has occurred;
 - d. The identity of the Investigator (and any applicable assistant);
 - e. Available College and community resources and services;
 - f. Invitation for both parties to submit a written statement and identify any third-party witnesses with information relevant to the complaint;
 - g. The rights and responsibilities of each party
 - i. statement that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal resolution process;
 - ii. a statement that the parties may request to see and review evidence collected in an investigation.
 - iii. The right to a Support Person and an Attorney or Non-Attorney Advisor, and the roles of such persons;
 - h. Availability and possibility of criminal and civil court options;
 - i. An outline of the process, including the contact information for the investigator and any required meetings that may be required; and
 - j. The College's prohibition against retaliation.
 - 5. The Investigation will be conducted by an investigator (internal or external) who is trained on the definition of sexual harassment under Title IX regulations, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, bias, and issues of relevance to create an investigative report that fairly summarizes relevant evidence..
 - 6. An investigation typically contains the following elements:
 - a. Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the respondent.
 - b. Complete the investigation promptly and without unreasonable deviation from the intended timeline.
 - c. Conduct interviews with the Complainant and Respondent to gather facts about the allegation.
 - d. Allow each party the opportunity to suggest witnesses and offer potential questions to consider asking to help uncover relevant facts related to the allegation.
 - e. Interview all available relevant witnesses and conduct follow-up interviews as necessary.
 - f. If and when additional material alterations to allegations arise, communicate this promptly to the parties. This notice will provide the parties with a summary of the additions or

- alterations of the allegations, as well as any changes to the policies implicated.
 - g. Provide the parties and witnesses an opportunity to review and verify the investigator's summary notes from their respective interviews and meetings.
 - h. Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, copies of which are to be included in an appendix to the report.
 - i. At the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) a copy of the draft investigation report.
 - j. Provide the parties with an equal opportunity to inspect and review the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a responsibility determination, so that each party may meaningfully respond to the evidence.
 - k. Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) calendar-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days.
 - l. Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
 - m. Incorporate any relevant feedback and share the final report with all parties and their Advisors at least ten (10) calendar days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.
 - n. Within 3 days of receiving the final investigation report, if the Parties wish to propose any additional witnesses not included in the investigation, notice must be provided to the Title IX Coordinator including list of the names of witnesses.
 - o. No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.
7. The College may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to

withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

8. Upon a dismissal, the College must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. The notice must contain information about the appeal process.

F. Advisors

1. The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

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

The College may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

2. The advisor may be a friend, mentor, family member, attorney, union representative or any other individual a party chooses to advise and consult with them throughout the resolution process. The parties may choose advisors from inside or outside the Montgomery College community. The Title IX Coordinator will also offer to assign a trained Pool member to serve as an advisor for any party if the party so chooses. The parties may choose their advisor from the Pool, a non-trained advisor from outside the pool, or proceed without an advisor.
3. The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
4. Montgomery College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney. The College will, however, provide a party with an advisor selected by the Title IX Coordinator from the Pool if a hearing proceeding takes place and the party has not previously been accompanied by an advisor. A College-appointed advisor is a process advisor who is trained on the institutional process and how to conduct appropriate cross-examination during the hearing. The advisor provided by the College is not an advocate or attorney and is not able to provide the same kinds of advice that an advocate or attorney is trained to

provide, but will act in the best interests of their advisee.

5. Parties may have assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the disciplinary proceedings, including:
 - a. Attendance at hearings, meetings, and interviews,
 - b. Private consultations during hearings, meetings, and interviews, except during a questioning at a hearing; and
 - c. Assistance with the exercise of any rights during the disciplinary proceedings. Notwithstanding the choice that the parties make in regards to the above, the presence of no more than two people, including a personal supporter, an attorney, or an advocate, at any hearing, meeting, or interview during the disciplinary proceedings.
6. Student Right to Paid Counsel for College Disciplinary Proceedings involving Sexual Assault.
 - a. Maryland Law (Education Article of the Annotated Code of Maryland, §11-601) requires the Maryland Higher Education Commission (MHEC) to pay reasonable costs and attorney's fees, subject to state funding and eligibility requirements, for:
 - i. A current or former student who makes a complaint on which a formal Title IX investigation is initiated and who was enrolled as a student at the time of the incident that is the basis of the complaint, unless the student knowingly and voluntarily chooses not to have counsel; and
 - ii. A current or former student who responds to a complaint on which a formal Title IX investigation is initiated and who was enrolled as a student at the time of the incident that is the basis of the complaint, unless the student knowingly and voluntarily chooses not to have counsel.
 - b. In consultation with State and local bar associations and legal services providers with expertise about sexual misconduct, MHEC will develop a list of attorneys and legal services programs willing to represent students on a pro bono (no cost to the student) basis or at fees equivalent to those paid to attorneys under civil legal services programs administered by the Maryland Legal Services Corporation.
 - c. A student may select an attorney from the list developed by MHEC to assist them throughout any disciplinary proceedings.
 - d. If a student selects and retains an attorney who is not on the list developed by MHEC, MHEC will pay fees to the attorney selected by the student that are equivalent to those paid to attorneys under civil legal services programs administered by the Maryland Legal Services Corporation.

- e. MHEC is not required to pay a student's attorney fees for representation in a criminal or civil matter.
 - f. The College may not discourage a student from retaining an attorney.
 - g. The student right to counsel will not prohibit the College from imposing interim safety measures.
- 7. All advisors are subject to the same College rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or other decision-makers except during a hearing proceeding, as described below.
 - 8. The parties are expected to ask and respond to questions on their own behalf throughout the investigation. While the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or quietly by passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks to step out of meetings to allow for private consultation.
 - 9. Advisors may be given an opportunity to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.
 - 10. Advisors are expected to refrain from interference with the College's investigation and resolution. Any advisor who interferes with or obstructs the investigation and resolution process, or otherwise disregards the parameters set forth in this procedure, will be warned once and only 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 meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated or replaced by a different advisor.
 - 11. The College expects that the parties may wish to have the College share documentation and evidentiary information related to the allegations with their advisors. Parties may share this information directly with their advisor, or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process. The College provides a consent form that authorizes the College to share such information directly with the advisor. The parties must either complete this form or provide similar documentation consenting to a release of information to the advisor before the College is able to share records with an advisor. While the College seeks consent for information sharing with advisors, the College is required to share the final investigation

report and directly related evidence with the advisor in order to prepare for the hearing. If a party requests that all communication be made through their attorney advisor, the Institution will comply with that request.

12. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the Institution's privacy expectations.
13. The College expects an advisor to adjust their schedule to allow them to attend College meetings when planned. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.
14. A party may elect to change advisors during the process, and is not obligated to use the same advisor throughout. The parties are expected to inform the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to investigators if they change advisors at any time.
15. For parties who are entitled to union representation, the College will allow the unionized employee to have their union representative (if requested by the party) as well as an advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, when at least one of the parties' request union representation, they are entitled to a non-union representative as well. In such cases, the other party (regardless of union membership) will be permitted to have two advisors. Witnesses are not permitted to have union representation or advisors in resolution process interviews or meetings.

G. Role and Participation of Witnesses

Witnesses (as distinguished from the parties) who are faculty, students, or staff of the College are encouraged cooperate with and participate in the College's investigation and resolution process.

While in-person interviews for both parties and all potential witnesses are ideal, circumstances (e.g. study abroad, summer break) may require individuals to be interviewed remotely using technology. Witnesses may also provide written statements in lieu of interviews, if deemed appropriate by the investigators, though not preferred.

- H. Assurances to Persons Involved, Safeguarding of Privacy. All individuals, including the Complainant, the Respondent, and any Third-Party Witnesses, will be treated with appropriate sensitivity and respect. The Investigator will

safeguard the privacy of the individuals involved in a manner consistent with law and College policy and the need to investigate the matter.

- I. Consolidation of Investigations. At the discretion of the Title IX Coordinator, multiple reports may be consolidated against a Respondent(s) in one Investigation, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.
- J. Referral for Hearing
Provided that the contested allegations are not resolved through Informal Resolution, the Title IX Coordinator will refer the matter for a hearing at least ten (10) days after the conclusion of the investigation, barring unusual circumstances.

1. Notice of Hearing

At least 10-days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Hearing Officer will send a letter of notice to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The letter will contain:

- a. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- b. The time, date, and location of the hearing and a reminder of the importance of their attendance, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Hearing Officer may reschedule the hearing.
- c. Notification that the parties may have the assistance of an advisor of their choosing at the hearing (See Section on "Advisors" above). If any party does not have an advisor, the Title IX Coordinator will appoint one from the Pool.
- d. The parties will be provided the names of the Hearing Officer at least ten (10) days in advance of the hearing. All objections to the Hearing Officer must be raised in writing and submitted to the Title IX Coordinator as soon as possible. The Hearing Officer will only be removed if the Title IX Coordinator concludes that the Hearing Officer's bias or conflict of interest precludes an impartial hearing of the allegation.

2. Pre-Hearing

The Hearing Officer, after consultation with the parties as necessary, will provide the names of witnesses who will be participating in the hearing with the parties prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators [or have proffered a written statement], unless all parties consent to the witness' participation in the hearing.

3. Alternative Hearing Options

If a party or parties prefer not to attend the hearing in person, the parties should request alternative arrangements from the Hearing Officer at least five (5) days prior to the hearing. The Hearing Officer may arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

4. Evidentiary Considerations

- a. Except for the evidentiary prohibitions set forth below, any evidence that the Hearing Officer believes is relevant and credible may be considered, including an individual's prior misconduct history, as well as evidence indicating a pattern of misconduct. When prior misconduct is related to the current allegations, the prior misconduct may be considered at the findings stage of the process; unrelated prior misconduct (e.g. alcohol abuse) will only be considered during sanctioning. The Hearing Officer may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.
- b. While previous conduct violations by the respondent are not generally admissible as information supporting the current allegation, the investigator(s) may, after a determination of responsibility is made that may result in sanctions, supply the Hearing Officer with information about previous misconduct, good faith allegations, and/or findings, when that information suggests a potential pattern and/or predatory conduct.
- c. Previous disciplinary action of any kind involving the respondent may be considered in determining the appropriate sanction, because the Institution uses a progressive discipline system.
- d. The Hearing Officer renders a determination based on the preponderance of the evidence, i.e., whether it is more likely than not that the respondent violated policy.

5. Evidentiary Prohibitions

The Hearing Officer shall not consider certain evidence, including:

- a. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior. Such questions and evidence 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.

- b. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

6. Hearing Procedures

Hearings will usually be convened at least 10-days days from the completion of the final investigative report and will be conducted in private. Participants will include the Hearing Officer, investigator(s) who conducted the investigation, the Complainant and Respondent (organizational representatives when an organization is the respondent), advisors and support person to the parties (the parties may have up to two people present, one advisor and one support person), and any called witnesses.

a. Investigator Presents the Report

- i. The Hearing Officer explains the procedures and introduces the participants.
- ii. The investigator(s) will then present the report of the investigation and will be subject to questioning by the Hearing Officer and parties. The investigator(s) will be present during the entire hearing process. Once the investigator(s) present their report and are questioned, the parties may provide relevant information in turn and the Hearing Officer will permit questioning of the parties and witnesses through the respective Advisors.

b. Participation in Hearing

The Complainant and Respondent have the right to be present at the hearing. If, despite being notified of the date, time, and location of the hearing, any party is not in attendance, the hearing may proceed as described below. Neither party is required to participate in the hearing in order for the hearing to proceed. Investigators will be present, unless the Hearing Officer permits an absence under extenuating circumstances.

c. Questioning

- i. Questioning will be permitted of investigators, parties, and witnesses by the advisors to each party and the Hearing Officer, including cross examination contesting a party's or witness's credibility. Direct cross examination by the parties is prohibited; the party's advisor must conduct the cross-examination on behalf of that party.
- ii. The Hearing Officer has absolute discretion to determine which questions are relevant to the determination and may decline to permit certain questions.

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- iii. The Hearing Officer may direct that certain live questions, once posed, are not appropriate and should not be answered. In such instances, the Hearing Officer will provide the questioning advisor with a rationale for their exclusion of the specific question(s). The Hearing Officer is responsible for ensuring that neither abusive nor inappropriate questioning occurs. The Hearing Officer will explain, on the record, the reason any question has been determined not appropriate to be answered.
 - iv. The Hearing Officer may consult with the College's General Counsel, when needed, to help assess the appropriateness of specific questions. If any party or advisor is disrespectful of or disruptive to the proceedings, the Hearing Officer will take actions they deem appropriate to preserve appropriate decorum.
- d. Evidence Presented at the Hearing
- i. Formal rules of evidence do not apply. Any evidence that the Hearing Officer believes is relevant and credible may be considered, except for the prohibitions stated in this procedure. The Hearing Officer is responsible for addressing any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence, and may disregard evidence lacking in credibility or that is improperly prejudicial. The Hearing Officer will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. An advisor is not permitted to answer questions on behalf of the party.
 - ii. Unless the Hearing Officer determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the Complainant (though there may be a limited exception with respect to pattern, the sexual history between the parties, or where evidence regarding the Complainant's sexual history is offered to prove that someone other than the Respondent engaged in the reported misconduct), if relevant, (3) or the character of the parties. While previous conduct violations by the respondent are not generally admissible as information about the present allegation, the investigators may supply the Hearing Officer with information about previous findings to consider as possible evidence of pattern and/or predatory conduct.
 - iii. There will be no observers in the hearing unless an exception is granted by the Hearing Officer. The Hearing

Officer will allow witnesses who have relevant information to attend only the portion of the hearing where that witness is responding to specific questions from the Hearing Officer or the parties involved, and then be excused.

- iv. In hearings involving more than one Respondent or in which two (2) or more complainant's have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Complainant to be conducted separately, if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent.
- v. Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Hearing Officer, the parties, their advisors and appropriate administrative officers of the College will be allowed to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

e. Deliberation and Determination of Outcome

- i. The Hearing Officer will deliberate in closed session to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. The Hearing Officer will base the determination(s) on a preponderance of the evidence (i.e. whether it is more likely than not that the respondent committed each alleged violation).
- ii. If the Hearing Officer concludes that there has been a violation of the College's 21001 - Sexual Misconduct Policy, the final determination and implementation of sanctions will be formulated in consultation with the appropriate administrators/disciplinary authority:
 - a) The Hearing Officer and The Director of Employee and Labor Relations and the Chief Human Resources Officer (for matters where the Respondent is an employee), or
 - b) The Hearing Officer and the appropriate Dean of Student Affairs (for matters where the Respondent is a student).
- iii. All sanctions shall be consistent with the College's

applicable policies, depending on the identity of the Respondent.

- a) Students: Student Code of Conduct (42001)
- b) Employees: the College's Disciplinary Action and Suspension Policy (34002/34002CP), the College's Discharge of Administrators and Staff Policy (34003/34003CP), the Personnel Grievance Process for Non-Bargaining Staff (34101/34101CP), the grievance procedure under applicable collective bargaining procedures, or any other applicable processes.

f. Notice of Outcome

- i. The Hearing Officer will then prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the finding, the information used in support of its recommendation, and any information the Hearing Officer excluded from its consideration and why. The report should conclude with any sanctions.
- ii. The Hearing Officer, using the deliberation report, will prepare a letter of outcome and will share the letter with the parties, including the final determination and applicable sanction(s), within three (3) days of sending the deliberative report to the Title IX Coordinator. The letter of outcome will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Institution records, or emailed to the parties' Institution-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter of outcome will contain the following information:
 - a) Identify the specific policy(ies) reported to have been violated, including the relevant policy section;
 - b) a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties, and witnesses, site visits, methods used to obtain evidence, and hearings held.
 - c) specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information

- d) under state or federal law; any corrective actions issued which the College is permitted to share according to state or federal law; and any remedies provided to the complainant designed to ensure access to the College's educational program or activity, to the extent the College is permitted to share such information under state or federal law; and
- e) the notification will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any appeals options that are available.

VII. Appeals

- A. Both parties have an opportunity to appeal from a determination regarding responsibility, and from the College's dismissal of a formal complaint or any allegations therein.
- B. An appeal must be filed within ten (10) business days after notice of dismissal or notice of outcome. After this ten-day timeframe, the right to appeal has been waived.
- C. The grounds for appeal are limited to:
 - 1. A procedural error or omission occurred that significantly affected the outcome.
 - 2. To consider new evidence, unknown or unavailable during the original Investigation, that could substantially impact the Investigative Findings and/or Determination (a summary of this new evidence and its potential impact must be included in the written statement of appeal);
 - 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
 - 4. The recommended Corrective Actions are substantially disproportionate to the severity of the violation or fall outside the range of sanctions the College has designated for purposes of its 21001 - Sexual Misconduct Policy.
- D. A written request must be sent to the designated Senior Vice President or designee, hereinafter collectively referred to as the Reviewing Official:
 - 1. The Senior Vice President for Administrative and Fiscal Services (for employees)
 - 2. The Senior Vice President for Student Affairs (for students)

- E. The designated Senior Vice President may elect to serve as the Reviewing Official or designate another administrator to serve as the Reviewing Official. In any case, the Reviewing Official shall not have a conflict of interest or bias for or against the Complainant or the Respondent. The Complainant or the Respondent may submit a written request to the Reviewing Official, with a copy to the designated Senior Vice President, that the Reviewing Official excuse him/herself. The grounds for such request are limited to: (1) claim of bias, (2) conflict of interest, and (3) inability to be fair or impartial. The request must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. This challenge must be raised within two (2) days after receipt of the Investigative Summary. The designated Senior Vice President shall grant or deny the recusal request within two (2) days after receipt of the request.
- F. Upon receipt of an appeal, the Reviewing Official or their designee shall notify the non-appealing person or persons, and the Title IX Coordinator. The Reviewing Official will provide both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- G. The Reviewing Official or their designee will generally be limited to a review of the Investigative Report and evidence file (i.e., the materials collected by the Investigator in the course of conducting the Investigation), the hearing recording, the Hearing Officers deliberative report, the College's 21001 - Sexual Misconduct Policy, and any other appropriate College policy and the Respondent's and/or Complainant's written appeal. The Reviewing Official, or their designee, may, in their sole discretion, ask the Title IX Coordinator, the investigator, or the Hearing Officer to clarify the Investigation report, hearing procedure and deliberative report, or remand the report back for additional investigation concerning any new evidence identified in the appeal or to assist in determining whether there was, in fact, a procedural error, if such Reviewing Official or their designee believes such an alleged error may have affected the outcome of the Investigation/Hearing and the Findings/Determination by the Hearing Officer.
- H. If the Reviewing Official or their designee determines in the course of their review that there was a procedural error that substantially affected the outcome of the Investigation, or that other circumstances exist requiring additional Investigation and hearing, the Reviewing Official shall order the Investigation and hearing to be reopened subject only to direction/supervision by and any terms/conditions imposed by the Reviewing Official (including, in any case in which substantial bias was present, appointment of a new Investigator or Hearing Officer). No disciplinary action may be carried out prior to the Reviewing Official or their designee expressly so directing in their Notice of Appeal Outcome.
- I. Within fifteen (15) days after the Reviewing Official receives the appeal, the Reviewing Official or her or his designee shall issue a Notice of Appeal Outcome either upholding the Hearing Findings and Determination and recommended Corrective Action of the Hearing Officer or remanding the case back to the Investigator. The Notice of Appeal Outcome of the Reviewing Official shall be final and will be forwarded simultaneously to the Complainant, Respondent, the Title IX Coordinator, appropriate Senior Vice President, campus Vice President and Provost, and the General Counsel.
 - 1. In the case of an appeal involving a student (i.e., in which either the Complainant and/or Respondent is a student), a copy of the Notice of

Appeal Outcome shall be forwarded to the appropriate Dean or to the appropriate campus Vice President and Provost.

2. In the case of an appeal involving a staff member (i.e., in which either the Complainant and/or Respondent is a staff member), a copy of the Notice of Appeal Outcome shall also be forwarded to the Director of Employee and Labor Relations, the Associate Senior Vice President of Human Resources and Strategic Talent Management, the employee's immediate supervisor, and other appropriate administrators.
3. In the case of an appeal involving a faculty member (i.e., in which either the Complainant and/or Respondent is a faculty member), a copy of the Notice of Appeal Outcome shall be forwarded to the Director of Employee and Labor Relations, the Associate Senior Vice President of Human Resources and Strategic Talent Management, the Senior Vice President for Academic and Student Services, the Instructional Dean who has supervisory authority over the faculty member's academic department, and other appropriate administrators.

VIII. Implementation of Corrective Action

- A. If a notice of appeal is not submitted to the appropriate Senior Vice President in accordance with Section VII. above, the appropriate administrators/disciplinary authority shall act to implement the recommended Corrective Action as soon as possible, but no later than twenty (20) days after the appropriate administrators/disciplinary authority receives notice of the corrective action.
- B. If a notice of appeal is submitted to the appropriate Senior Vice President, the appropriate unit administrator/disciplinary authority shall act to implement recommended Corrective Action as soon as possible but no later than twenty (20) days after the appropriate unit administrator/disciplinary authority receives a copy of the Notice of Appeal Outcome containing the final recommended Corrective Action.
- C. Notwithstanding the foregoing, in cases where the Complainant or Respondent is an employee covered by a collective bargaining agreement, the employee may seek review of the recommended Corrective Action (or, if an appeal has been filed, the Notice of Appeal Outcome) under any grievance procedures available under the employee's collective bargaining agreement. If both Complainant and Respondent are employees covered by different collective bargaining agreements, the grievance procedures in the agreement that covers the party challenging the decision shall be used. If a Complainant or Respondent covered by a collective bargaining agreement seeks review of the recommended Corrective Action through the applicable agreement's grievance procedure, they may not also appeal the recommended Corrective Action under this Procedure. However, a Complainant or Respondent may appeal a recommended Corrective Action under this Procedure and then seek review of the Notice of Appeal Outcome under the grievance procedure of the applicable collective bargaining agreement.

If the Hearing Officer makes a Finding or the Reviewing Official makes a final written determination that there has been a violation of the College's policy with respect to a grade awarded to a student, the Hearing Officer or the Reviewing

Official shall make no determination with respect to the Corrective Action to be taken regarding a specific grade assignment. The Hearing Finding or final written determination shall be forwarded to the Complainant, Respondent, and the appropriate Dean, who shall select a review committee in accordance with the procedures stated in the Academic Regulations for the review of allegations of arbitrary and capricious grading. The Committee, which is established pursuant to 53001-Academic Regulations to review allegations of arbitrary and capricious grading, shall have no authority to reverse the Investigative Finding or Determination of the Investigator or the final written determination of the Reviewing Official, and shall confine its consideration to a determination of the appropriate Corrective Action with respect to the grade. The Committee shall, within twenty (20) days after appointment of the Committee and its receipt of the Initial Finding and Determination or final written determination, forward to the Investigator and the Reviewing Official, Complainant, and Respondent a written recommendation as to the appropriate Corrective Action with respect to the grade.

Within ten (10) days after receipt of the written recommendation of that Committee, the Senior Vice President for Academic Affairs and the Senior Vice President for Student Services shall review the recommendation of the Committee and, upon completing such review, shall issue a final written determination of the Corrective Action with respect to the grade she or he determines to be appropriate for such violation (which she/he shall implement), and a copy of which shall be forwarded to the Complainant, Respondent, Reviewing Official, and Hearing Officer.

IX. Notice of Final Outcomes

Once an appeal has exhausted the process set forth above, the Notice of Appeal Outcome is the final administrative decision of the College. The Title IX Coordinator shall simultaneously send the Notice of Appeal Outcome to the Complainant and Respondent .

X. Sanctions

- A. Both parties shall be informed of the outcome of any investigation and adjudicative process based on a violation of this policy. The College shall not publicly disclose personally identifiable information about either of the parties, except as required by law.
- B. Employees found in violation of this policy are subject to a range of disciplinary action up to and including discharge, depending on the circumstances (See Appendix I for possible sanctions).
- C. Students found in violation of this policy are subject to disciplinary action based on the circumstances and nature of the violation. Sanctions include, but are not limited to dismissal from the College (suspension or expulsion) and other sanctions provided by 42001-Student Code of Conduct (See Appendix I for possible sanctions).
- D. Persons who commit Sexual Misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.

XI. Records

- A. The Title IX Coordinator and the Director of Employee and Labor Relations will retain records of all reports, regardless of whether the matter is resolved by means of an Initial Title IX Assessment, Informal Resolution or Investigation/Formal Resolution. Reports resolved by means of an Initial Title IX Assessment or Informal Resolution are not part of a student's conduct file or academic record or of an employee's personnel file. Records will be maintained by the Title IX Coordinator for 7 years.
 - B. Affirmative findings of responsibility in matters resolved through Investigation/Formal Resolution are part of a student's conduct record and an employee's labor relations record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's labor relations record.
 - C. Generally, suspension, demotion, and discharge are permanently noted in an employee's labor relations record. The labor relations records of employees who have been suspended, demoted, or discharged are maintained in the Associate Senior Vice President for Human Resources and Strategic Talent Management Office according to the College's published retention schedule. Further questions about record retention should be directed to the Associate Senior Vice President for Human Resources and Strategic Talent Management Office.
 - D. Generally, suspension, expulsion, and withdrawal are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Senior Vice President of Student Services Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Senior Vice President for Student Services office.
- XII. Time Limits
- Business days are defined as all days during the calendar year other than Saturdays, Sundays, and days the College is closed.
- The Title IX Coordinator, Director of Employee and Labor Relations, and, where appropriate, the Senior Vice Presidents, or designees, may exercise reasonable discretion to adjust the time limits set forth in this procedure.
- XIII. Receipt of Notification
- Whenever, under these procedures, individuals must be notified in writing, a copy shall be served in person, by certified, return receipt requested mail to the address that is kept on file at the College, or via email. For purposes of computing any time frames under these procedures, where service is by US mail, the date of service shall be considered to be the third day after the postmarked date of the letter. It is the responsibility of the individual to ensure that the College has their current address on file.
- XIV. Pursuant to the President's authority to establish the foregoing Procedure, the President may amend, modify, or supplement this Procedure, or replace the Procedure in whole or in part, at any time and from time to time.

Administrative Approval: June 29, 2015; October 28, 2015; October 11, 2018; June 18, 2019;
September 7, 2021; February 22, 2023