

# Investigation & Grievance Procedures: Sexual Misconduct Allegations Against Employees

Augustana has established a Policy Against Sexual Misconduct and Title IX Sexual Harassment (“Policy”) that articulates the College’s behavioral standards and descriptions of prohibited conduct. There are separate procedures for resolving allegations of Sexual Misconduct and Title IX Sexual Harassment. These Investigation and Grievance Procedures: Sexual Misconduct Allegations Against Employees (“Procedures”) apply to all suspected or alleged acts of Sexual Misconduct that do not meet the definition of Title IX Sexual Harassment.

The College has established a **Policy Against Sexual Misconduct and Title IX Sexual Harassment (“Policy”)** that articulates conduct prohibited by the College which applies to all members of the College community. The Policy and these Investigation and Grievance Procedures outline the College's approach to addressing reports of suspected Policy violations by an employee. Investigation and grievance procedures vary based on the nature of the allegations, including where the alleged conduct occurred, and the classification of the individual who is accused of violating the Policy. Allegations that a student violated the Policy are governed by the investigation and grievance procedures outlined in the student handbook Inside Augustana. The College's investigation and grievance procedures take into account the College's status as a private institution of higher education and its unique mission and culture. Because the College's approach to resolving alleged or suspected violations of the Policy is grounded in its mission and purpose as an educational institution, its approach to resolving alleged or suspected violations of the Policy is educational, rather than legal or judicial. As a result, the College retains the discretion to exercise its academic and educational judgment in investigating and resolving alleged or suspected violations of the Policy in a manner that is consistent with its mission and the various anti-discrimination laws that apply to its programs.

The College is committed to promptly, fairly, impartially, and equitably resolving alleged or suspected violations of the Policy. The College's ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the Complainant is willing to participate in an investigation, the location where the alleged conduct occurred, and the College's access to information relevant to the alleged or suspected violation of the Policy. The College is nonetheless committed to investigating and resolving all alleged and suspected violations of the Policy to the fullest extent possible under the circumstances.

## **RELATIONSHIP TO THE TITLE IX SEXUAL HARASSMENT INVESTIGATION AND RESOLUTION PROCEDURES**

“Title IX Sexual Harassment,” as defined in the Policy, will be governed by the Title IX Sexual Harassment Investigation and Resolution Procedures and should be addressed according to the processes stated therein. All other forms of sex-based discrimination

that may constitute Sexual Misconduct are governed by these procedures, including sexual harassment, that do not rise to the level of Title IX Sexual Harassment as defined in the Policy.

Conduct that is initially raised through a complaint under the Title IX Sexual Harassment Procedures may also be addressed under these Sexual Misconduct Procedures, in the College's discretion, when: (i) the conduct at issue, or some part of it, may constitute Sexual Misconduct irrespective of whether it constitutes Title IX Sexual Harassment under the Policy; (ii) the Formal Complaint, or some part of it, has been dismissed under the Title IX Sexual Harassment Procedures; or (iii) a final determination of a Formal Complaint has been made under the Title IX Sexual Harassment Procedures and separate or additional action may be necessary to enforce this policy.

Where the College determines, in its discretion, that these Sexual Misconduct Procedures will govern for suspected or alleged acts of Sexual Misconduct, the procedures herein will be used in place of any Faculty or Employee Handbook policies or procedures used to address other alleged misconduct. In addition, any sanctions or other corrective actions imposed against employees who violate the Policy shall be imposed pursuant to these Procedures, rather than pursuant to any other set of policies and procedures governing employee conduct, unless the College determines in its discretion that any other policy governing employee conduct should be used to resolve a particular matter.

The College may at any time, upon finding of good cause, modify the Sexual Misconduct Investigation and Grievance Procedures in the interests of promoting full and fair resolution of suspected or alleged violations of the Policy in accordance with applicable law.

## **CONFIDENTIALITY**

In matters involving incidents of sexual misconduct or other interpersonal misconduct, a request by a complainant not to be identified will be respected to the extent allowable under federal and state law, and information pertaining to such incidents will be treated with sensitivity and disseminated with care when it is necessary to do so for purposes of conducting an investigation or taking appropriate corrective action. The College reserves the right (as permitted or required by applicable law) to issue timely warnings and make other announcements to the College community when the College determines that there is a serious or continuing threat to members of the College community or that there is another significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on the College's campus. In making such announcements to students and employees, the College will withhold the names of complainants as confidential to the greatest extent permitted by law. Under federal law, the College must report the occurrence of certain designated crimes that occur on campus or in certain other designated areas, including sex offenses as defined by the federal government, in an annual security report that is

submitted to the U.S. Department of Education. This annual security report does not include personally identifiable information.

## Initial Response, Supportive Measures, Investigation and Resolution

### INITIAL RESPONSE

#### **Preliminary Assessment of Alleged Misconduct**

For every report of an alleged or suspected violation of the Sexual Misconduct and Title IX Sexual Harassment Policy, the Title IX Coordinator or designee will review the circumstances of the reported conduct to determine the following:

- Whether the College has jurisdiction over the parties involved;
- Which procedure is applicable to the parties and the conduct being reported; and
- The actions within the College's control necessary to eliminate, prevent, and address the reported conduct.

If the Respondent is not a member of the College community or is no longer affiliated with the College at the time of the report or at the time an investigation or resolution process is initiated (including if the Respondent has graduated or otherwise left the College), the College may be unable to take disciplinary action or conduct an investigation.

As a result of the Preliminary Assessment, the Title IX Coordinator or designee may determine that the conduct constitutes or could constitute Title IX Sexual Harassment, as defined in the Policy, and may proceed to apply the Title IX Sexual Harassment Investigation and Resolution Procedures.

If the Title IX Coordinator determines that the conduct reported does not or could not constitute Title IX Sexual Harassment but could constitute Sexual Misconduct, as defined in the Policy, the Title IX Coordinator will proceed with the procedures set forth in these Sexual Misconduct Procedures below.

Upon receiving a report or complaint alleging a violation of the Policy from a student, the Title IX Coordinator or their designee will provide Student Complainants<sup>1</sup> with a written statement of their rights and options under the Policy and these Procedures. The Student Complainant will also be informed of the availability of a confidential advisor. Confidential advisors are available to Student Complainants and provide confidential emergency and on-going assistance to alleged victims of sexual assault upon request. Confidential advisors are employees of Family Resources- Survivor Services of the Quad Cities. The Title IX Coordinator or their designee will meet with all Complainants, student and non-student, and discuss fully the options afforded to them, including the availability of supportive measures, the option to proceed with a formal

complaint, the rights and responsibilities of both parties when a formal complaint is made (including the right of students to be accompanied during any College grievance proceeding and any related meeting by an advisor of their choice whose participation will be limited as outlined in this Policy), the process of identifying potential witnesses, the prohibition against retaliation, and the need to preserve any relevant evidence or documentation. Any time after this meeting, a Complainant may choose to file a formal complaint, which initiates the College's disciplinary process. Supportive measures may be requested regardless of whether the individual chooses to proceed with a formal complaint.

If a Complainant, whether a student or non-student, chooses not to file a formal complaint, the College must still discharge its responsibility to understand what occurred and take steps to foster an educational environment that is free of discrimination and harassment for all members of the campus community. As a result, the College will seek to respect the Complainant's request, but it must also take into account the seriousness of the alleged misconduct and threats to community safety. Factors that will be considered include the following:

- Whether there have been other complaints about the same alleged respondent;
- Whether the respondent has a known history of arrests or records from a prior school or prior employment indicating a history of violence;
- Whether the respondent threatened further sexual misconduct or other prohibited behaviors against the student or others;
- Whether the report involves multiple perpetrators;
- Whether the report suggests there is an increased risk of future acts of sexual misconduct under similar circumstances;
- Whether the sexual misconduct was perpetrated with a weapon;
- The relationship between the respondent and the complainant (i.e., faculty/student or employee/employee); and
- Whether the College possesses other means to obtain relevant evidence.

If the College elects to proceed with an investigation, it will consult with the Complainant and provide information about the chosen course of action, including any supportive measures that will be taken to protect the Complainant and ensure the safety of the College community.

After the Complainant files a formal complaint that reports a potential violation of the Sexual Misconduct Policy or when the College determines it is appropriate to proceed with a formal complaint, the College will investigate the allegations as outlined below. The initiation of a formal complaint is not a determination of a Policy violation and the Respondent will not be deemed by the College to have violated the Policy unless and until (a) the Respondent accepts responsibility for the alleged Policy violation, or (b) the College's process for determining a Policy violation are followed, and a finding has been made in accordance with these Procedures.

All parties will be informed that the College prohibits any retaliation against parties involved in reporting or witnessing allegations of violations of the Policy and that retaliation is grounds for disciplinary action.

## **SUPPORTIVE MEASURES**

Upon receipt of a report or complaint alleging a violation of the Policy, the Title IX Coordinator or their designee will work with all parties involved in an alleged incident to promptly undertake any appropriate supportive measures to protect the safety of the campus community and will seek to provide support for the parties that address their safety and well-being while the report is investigated, and if pursued, through the resolution. Supportive measures may include counseling services, obtaining and enforcing mutually agreed upon campus no contact orders, honoring an order of protection entered by a State court, provision of escorts, housing support, including reasonable residence or other living modifications. In addition, the College may, at its discretion, impose an interim suspension, an interim ban from the College campus, or interim leave of absence in cases where the College believes that such action is appropriate after assessing all factors in a particular case, such as the risk of harm to others and the risk of disruption or interference with normal College operations. The College will maintain as confidential any supportive measures provided to the parties, to the extent that maintaining confidentiality will not impair the ability to provide the supportive measures. Supportive measures may be requested at any time by a party, and regardless of whether an individual chooses to file a formal complaint of a Policy violation. When issued, however, supportive measures have no bearing on the complaint process and do not suggest a finding of responsibility.

### **Resources for Complainants and Respondents**

Any student affected by Sexual Misconduct will have access to support and counseling services offered through the College. Employees involved in a Sexual Misconduct allegation also have access to support and counseling services offered through the College's Employee Assistance Program. More information on this program is available at <https://www.augustana.edu/about-us/offices/hr/benefits/eap>. Family Resources-Survivor Services of the Quad Cities provides assistance to victims of sexual violence and is available to all community members. The College encourages any individual who has questions or concerns to seek support from these resources. The Title IX Coordinator is available to provide information about the College's Policy and procedures and to provide assistance. A list of existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services and resources available is located at the following link: <https://www.augustana.edu/student-life/TitleIX>

## INFORMAL RESOLUTION PROCEDURE

Allegations of Sexual Misconduct may be resolved informally when overseen by one or more College representatives if (i) the College determines, in its discretion, that informal resolution would be appropriate; and (ii) **all parties agree to participate**.

If mediation is used to achieve an informal resolution, the parties will not deal directly with one another without the College's involvement and approval, and without the consent of all parties. The Title IX Coordinator and the Complainant may agree to seek an informal resolution of the complaint by meeting with the Respondent, maintaining anonymity if appropriate or possible. The Title IX Coordinator can also arrange for any current member of the College faculty, staff or student community to be asked to assist with the informal process by meeting with both parties separately or together.

The College or a party may withdraw their consent to participate in the informal resolution process at any time before a resolution has been finalized. In such a case, the matter will proceed to Formal Resolution.

If the parties reach a resolution through the informal resolution process and the College agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will outline the terms of the agreed resolution in writing and present it to both parties for their signature. Once signed, the resolution is final and all allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the College, except as otherwise presented in the resolution itself. Informal resolution is not subject to appeal.

## INVESTIGATION & FORMAL RESOLUTION

Depending upon the nature of the alleged or suspected Policy violation and any requests by the Complainant for confidentiality or an election not to proceed with a formal complaint, the College will initiate and coordinate an investigation of a reported violation of the Policy as soon as practical. The College is committed to undertaking prompt, thorough, impartial and fair investigations and to treating all individuals with respect and with sensitivity.

The nature and extent of the investigation will vary depending upon the circumstances, including whether the parties are amenable to pursuing an informal resolution. To help ensure a prompt and thorough investigation, Complainants are asked to provide as much information as possible, including the following:

- The name, department, and position of the person or persons allegedly causing the prohibited discrimination, harassment, or retaliation.
- A description of any relevant incident(s), including the date(s), location(s), and the presence of any witnesses.
- The alleged effect of the incident(s) on the Complainant's opportunity to participate in or benefit from the College's programs or activities.
- The names of other individuals who might have relevant information about the alleged

actions and/or have been subject to the same or similar acts of discrimination, harassment, or retaliation.

- Although it is not required, any steps the Complainant has taken to try to stop the discrimination, harassment, or retaliation.
- Any other information the Complainant believes to be relevant to the alleged discrimination, harassment, or retaliation.

The Respondent is also expected to provide as much information as possible in connection with the investigation.

Student Complainants are entitled to bring an advisor of their choice to any meeting or interview in connection with these Procedures, provided that the involvement of the advisor does not result in undue delay of the meeting or proceeding. The role of the advisor of choice is limited to consulting privately with the party they accompany.

If the matter is not resolved informally, a determination of whether the Policy was violated will be made based on information gathered in the investigation, including but not limited to interviews with the Complainant, the Respondent, and any other relevant individuals. This determination will be made by the Office of Human Resources when allegations involve a non-faculty employee. Allegations that a faculty member violated the Policy will be determined by the Dean of the College, or their designee. In all matters, the decision of the Office of Human Resources, the Dean of the College or their designees, will be final and is not subject to appeal. If, however, the Dean of the College recommends separation of a faculty member from the College, the separation will be handled in accordance with any existing and applicable faculty handbook provisions relating to separation from the College. In some cases, the College may not be able to determine that a Policy violation occurred; in such a situation, the College may still require action to be taken to promote a healthy and respectful environment.

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

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

## Sanctions & Corrective Action

The College will take reasonable steps to prevent the recurrence of any violations of the Policy and to correct the discriminatory effects on the Complainant (and others, if

appropriate). The range of potential sanctions and corrective actions that may be imposed for any violation of this Policy includes but is not limited to the following:

- Verbal warning
- Written warning
- Mandatory discrimination or harassment training or education
- Mandatory Counseling
- Technology/Equipment/Resource access restrictions
- College campus access restrictions
- Change in assigned duties and/or committee assignments
- Leave of absence
- Termination of employment with the College

Corrective actions taken by the College might also include, but are not limited to: providing and/or requiring appropriate forms of counseling and training, developing educational materials and programming, implementation of revised policies and procedures, undertaking climate surveys and other mechanisms to identify and address patterns of violations. Additional corrective actions for a Complainant may include, but are not limited to, support services and accommodations such as escorts, counseling and medical services, academic or residential accommodations and support.

In instances where the College is unable to take disciplinary or other corrective action in response to a reported violation, the College will consider other steps available to limit the effects of the conduct at issue and prevent its recurrence, such as the continuation of supportive measures, training and education.

A Complainant will be informed of the outcome of the investigation, but may not be informed specifically of all sanctions or other remedial action.

## **RECORDS MAINTENANCE**

For a period of 7 years, the College will maintain documentation and records regarding alleged violations of the Policy and their resolution in a manner that protects the confidentiality of the parties involved, complies with the Family Educational Rights and Privacy Act, and to the extent possible excludes personally identifiable information of victims of domestic violence, dating violence, and stalking. Findings that an employee violated the Policy will be retained in the employee's file and subject to retention rules pertaining to personnel records.

## **CHANGES IN THIS POLICY**

The College reserves the right to make adjustments and changes in this policy at any time.

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*<sup>1</sup> Use of the term “Complainant” in this policy refers to all complainants, and use of the term “Student Complainants” refers only to complainants who are students currently enrolled and participating in the education program, or seeking to participate in the education program.*