

# Sex Discrimination Investigation & Resolution Procedures

Augustana College has established a Policy Against Sex Discrimination (“Policy”) that articulates the College’s behavioral standards and descriptions of prohibited conduct. These Investigation and Resolution Procedures<sup>12</sup> (the “Procedures”) apply to all suspected or alleged acts of sex discrimination including sex-based harassment.

These Procedures outline the College's approach to addressing reports of suspected Policy violations by members of the College community. The 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. The 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, and impartially resolving alleged or suspected violations of the Policy. The College will treat complainants and respondents equitably. 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.

Where the College determines, in its discretion, that these Procedures will govern for suspected or alleged acts of Sex Discrimination, the procedures herein will be used in place of any other Augustana College policies or procedures used to address other alleged misconduct. In addition, any sanctions or other corrective actions imposed against Augustana College community member who violates the Policy shall be imposed pursuant to these Procedures, rather than pursuant to any other set of policies and procedures governing conduct, unless the College determines in its discretion that any other policy governing the conduct should be used to resolve a particular matter.

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

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<sup>1</sup> Based on the 2024 ATIXA Title IX Model Policy and Procedures (AMPP). ©2024 ATIXA. Used With Permission.

<sup>2</sup> Based on EIIA Model Policy developed by Novus Law Firm and Grand River Solutions

## **CONFIDENTIALITY/PRIVACY**

The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any Complainant, the identity of any individual who has been reported to be a perpetrator, Respondent, and the identity of any witness. The College will also maintain the confidentiality of its various records generated in response to reports and complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records.

Notwithstanding the foregoing, the College may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the College's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this Policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the College's general obligation to maintain confidentiality as specified herein, the parties to a report or complaint will be given access to investigation and adjudication materials in the circumstances specified in these Procedures. In all interviews and meetings held in connection with these Procedures, the College will protect the privacy of the participating parties and witnesses as required by FERPA and other applicable law.

While the College will maintain confidentiality specified in these Procedures, the College will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in the Policy/Procedures.

Note that certain types of Sexual Harassment are considered crimes for which the College must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

## **RESPONSE TO A REPORT**

The following process will be used following the receipt of a report of conduct prohibited by the Policy :

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

For every report of an alleged or suspected violation of the Policy, the Chief 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.

If the Chief Title IX Coordinator determines that the conduct could constitute Sex Discrimination, as defined in the Policy, the Chief Title IX Coordinator will proceed with the steps set forth in these Procedures.

Upon receiving a report or complaint alleging a violation of the Policy from a student, the Chief Title IX Coordinator or their designee will provide Complainants who are students (Student Complainants) 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 Campus Advocate. Campus Advocates are available to Student Complainants to provide confidential emergency and on-going assistance to alleged victims of sexual assault upon request. The Campus Advocate is an employee of Family Resources- Survivor Services of the Quad Cities. The Chief 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 complaint, the rights and responsibilities of both parties when a 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 complaint, which initiates the College's disciplinary process. Supportive measures may be requested regardless of whether the individual chooses to proceed with a complaint.

When a Complainant requests that the College not use their name as part of any Resolution Process, or that the College not take any further action, the College will generally try to honor those requests. However, there are certain instances in which the College has a broader obligation to the community and may need to act against the wishes of the Complainant. In such circumstances, the Chief Title IX Coordinator will notify the Complainant in writing of the need to take action. The factors the Chief Title IX Coordinator will consider when determining whether to act against the wishes of a Complainant include:

- The Complainant's reasonable safety concerns regarding the initiation of a complaint;
- The risk that additional acts of Prohibited Conduct would occur if a complaint is not initiated;
- 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 report involves multiple perpetrators;
- Whether the sex discrimination was perpetrated with a weapon;
- The relationship between the respondent and the complainant (i.e., faculty/student or employee/employee); Whether the College possesses other means to obtain relevant evidence;
- Whether the College could end the alleged sex discrimination and prevent its recurrence without initiating these Procedures; and
- Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other persons, or that the conduct as alleged prevents the

College from ensuring equal access on the basis of sex to its education program or activity

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 complaint that reports a potential violation of the Policy or when the College determines it is appropriate to proceed with a complaint, the College will investigate the allegations as outlined below. The initiation of a 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.

### **Initial Contact**

Following receipt of a report alleging a potential violation of the Policy, the Chief Title IX Coordinator or designee will contact the Complainant to meet with the Chief Title IX Coordinator for an initial intake and assessment meeting, and will provide the following:

1. An invitation to meet to offer assistance and explain their rights, resources, and options under this Policy.
2. Access to the Policy and these Procedures.
3. Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may also be provided.
4. Information regarding the availability of Supportive Measures, regardless of whether a complaint is filed and/or any Resolution Process is initiated.
5. The options for resolution (no action, prevention, agreement, investigation) and how to initiate such Resolution Processes.
6. The right to notify law enforcement as well as the right not to notify law enforcement.
7. The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Campus Safety or local law enforcement in preserving evidence.
8. The right to an Advisor of choice, if applicable, during College proceedings under this Policy including the initial meeting with the Chief Title IX Coordinator.
9. A statement that retaliation for filing a complaint, or participating in the complaint process, is prohibited.

### **Supportive Measures**

Upon receipt of a report or complaint alleging a violation of the Policy, the Chief Title IX Coordinator or their designee will work with all parties involved in an alleged incident to offer and implement appropriate and reasonable supportive measures to the Parties. Supportive measures are non-disciplinary, non-punitive individualized services offered as deemed appropriate by the College and as reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the College's education program or activity, and they include measures designed to protect the safety of all Parties.

The Chief Title IX Coordinator or designee promptly makes supportive measures available to the Parties upon receiving notice of a complaint. The Chief Title IX Coordinator or designee will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the College's ability to provide those supportive measures. The College will act to ensure as minimal an academic/occupational impact on the Parties as possible. The College will implement measures in a way that does not unreasonably burden any party.

Supportive measures may include, but are not limited to:

- Referral to counseling
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Implementing contact restrictions (no contact directives) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No-Trespass directives
- Timely warnings
- Class schedule modifications
- Any other actions deemed appropriate by the Chief Title IX Coordinator or designee

Violations of no contact directive or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Chief Title IX Coordinator. An Appeal Officer will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The College will also provide the Parties with the opportunity to seek additional modification or termination

of supportive measures applicable to them if circumstances materially change. The College typically renders decisions on supportive measures within seven (7) business days<sup>3</sup> of receiving a request and will provide a written determination to the impacted party(ies) and the Chief Title IX Coordinator or designee.

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

Any student affected by sex discrimination will have access to support and counseling services offered through the College. Employees involved in a sex discrimination, including sex-based harassment, sexual misconduct, and other interpersonal misconduct including retaliation 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 Chief 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/TitleIX>

### **Accommodations**

College programs and procedures must be accessible to all students. Students who have a documented disability have the right to reasonable accommodations that are necessary to make college policies accessible, including these investigation and resolution procedures. Students with disabilities may request accommodations by contacting the Director of Disability Services and filling out the "Request for Academic Accommodations" form on the link provided: <https://www.augustana.edu/student-life/residential-life/accommodations>. The Chief Title IX Coordinator or designee will work with the Director of Disability Services to provide reasonable accommodations that are necessary to make these Procedures accessible. Students who have or think they may have a disability are invited to contact the Director of Disability Services for a confidential discussion. For more information, please see the Office of Disability Services website <https://www.augustana.edu/student-life/residential-life/disability-services>.

## **DISMISSAL OF A COMPLAINT**

Before dismissing a complaint, the College will make reasonable efforts to clarify the allegations with the Complainant. The College may dismiss a complaint if:

1. The College is unable to identify the Respondent after taking reasonable steps to do so.
2. The Respondent is not participating in the College's education programs or activities and/or is not employed by the College.
3. The Complainant voluntarily withdraws their complaint in writing and the Chief Title IX Coordinator declines to initiate a complaint.

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<sup>3</sup> A business day is when the College is in normal operation. College closure for breaks, holidays, etc. do not constitute a business day. All references to days in the Policy and Investigation and Resolution Procedures refer to business days unless specifically noted.

4. The Complainant voluntarily withdraws some but not all allegations in a complaint in writing, and the College determines that the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under the Policy; or
5. The College determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under the Policy.

Upon dismissal, the College will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will notify the parties simultaneously, in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Chief Title IX Coordinator or designee will include that information in the notification.

The College will notify the Complainant that a dismissal may be appealed on the basis outlined in the Dismissal Appeals section below. If dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the College will follow the procedures outlined in the Dismissal Appeals section of these Procedures.

When a complaint is dismissed, the College will, at a minimum:

1. Offer supportive measures to the Complainant as appropriate.
2. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
3. Take other prompt and effective steps, as appropriate, through the Chief Title IX Coordinator to ensure that sex discrimination does not continue or recur within the College's education program or activity.

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

### **Dismissal Appeals**

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Chief Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Chief Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

The grounds for dismissal appeals are limited to:

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.
- The Chief Title IX Coordinator or the Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or

Respondent that would change the outcome.

The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Chief Title IX Coordinator will share the request with all other Parties and provide three (3) business days for other Parties to respond to the request. At the conclusion of the response period, the Chief Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties to the Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Chief Title IX Coordinator will deny the request, and the Parties, their Advisors will be notified in writing of the denial and the rationale.

Appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Chief Title IX Coordinator's discretion, and the Parties will be notified of any extension.

## **INTERIM/EMERGENCY REMOVAL OF A STUDENT**

The College may remove a student accused of Sex Discrimination on an interim or emergency basis, upon receipt of report, a complaint, or at any time during the Resolution Process. Prior to an interim/emergency removal, the College's Behavioral Intervention Team will conduct an individualized risk assessment. The student may be removed if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.

When an interim/emergency removal is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within two (2) business days of the notification. Upon receipt of a challenge, the Chief Title IX Coordinator will meet with the student (and their Advisor, as applicable and if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Chief Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Chief Title IX Coordinator for review.



An interim/emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Chief Title Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

## **EMPLOYEE ADMINISTRATIVE LEAVE**

The College retains the authority to place a Respondent who is employed by the College on administrative leave during a pending complaint process under the Policy and these Procedures, with or without pay, as appropriate. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

## **STUDENT WITHDRAWAL OR EMPLOYEE RESIGNATION WHILE MATTERS ARE PENDING**

If a student or employee Respondent permanently withdraws or resigns from the College with unresolved allegations pending, the College will consider whether and how to proceed with the Resolution Process. The College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A student Respondent who withdraws or leaves while the Resolution Process is pending may not return to the College without first resolving any pending matters. Such exclusion applies to all College educational activities and programs.

An employee Respondent who resigns with unresolved allegations pending is not eligible for rehire with the College. All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **COUNTER-COMPLAINTS**

The College is obligated to ensure that the Resolution Process is not used for retaliatory purposes. Although the College permits the filing of counter-complaints, the Chief Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the appropriate Resolution Process described below. At the Chief Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial complaint.

## **REFERRALS FOR OTHER MISCONDUCT**

The College has the discretion to refer complaints of misconduct not covered by this Policy for handling under any other applicable College policy or code. As part of any such referral

for further handling, the College may use evidence already gathered through any process covered by this Policy.

## **CONSOLIDATION OF COMPLAINTS**

The College may consolidate Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. Where multiple policies may be implicated by the same set of facts or circumstances, the College may bifurcate the proceedings in accordance with the requirements of the individual policies.

The College also reserves the right to use this Policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this Policy in instances when the conduct is associated with an alleged issue of prohibited conduct under this Policy. The Chief Title IX Coordinator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Dean of Students and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Policy.

## **ADVISORS FOR STUDENTS<sup>4</sup>**

Student Complainants and Student Respondents may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. A student party may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>5</sup> More information regarding the responsibilities and expectations of an Advisor may be found in Appendix B.

The College cannot guarantee equal Advisory skills or experiences, 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 to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout the Resolution Process. Parties are expected to provide the Chief Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

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<sup>4</sup> If a non-student is a party to an allegation involving a student as the Complainant or Respondent, the non-student will be provided the same opportunity to be accompanied by an Advisor of choice to any meeting or proceeding.

<sup>5</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. The Advisor cannot have institutionally conflicting roles, such as being an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts 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 Decision-maker(s).

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the College's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor. Subsequently, the Chief Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **OPTIONS FOR RESOLUTION**

The College's Resolution Process consists of multiple ways to resolve a complaint or report of sex discrimination, as outlined in more detail below.

### **A. INFORMAL RESOLUTION**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Chief Title IX Coordinator at any time prior to a final determination, or the Chief Title IX Coordinator or designee may offer the option to the Parties, verbally or in writing. The College will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, the College will provide the Parties with a written notice that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the College's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Investigation and Resolution Procedures arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information the College will maintain, and whether and how it could disclose such information for use in its Investigation and Resolution Procedures

Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time prior to reaching an Informal Resolution agreement and initiate or resume the Resolution Process.

If an investigation is already underway, the Chief Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

The College offers the following types of Informal Resolution:

### Supportive Resolution

The Chief Title IX Coordinator or designee will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the College's education program and activities. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received notice of an allegation, the Chief Title IX Coordinator or designee may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Chief Title IX Coordinator does not initiate a Complaint.

### Educational Conversation

The Complainant(s) may request that the Chief Title IX Coordinator or designee address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Chief Title IX Coordinator or designee may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

### Agreement-Based Resolution

Agreement-Based Resolution is an alternative where the Parties each voluntarily agree to resolve the complaint in a way that does not include an investigation and does not include any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If the College offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Chief Title IX Coordinator must still take other prompt and effective steps as needed to ensure that sex discrimination does not continue or recur within the College's education program or activity.

The Chief Title IX Coordinator must approve of the use of the Agreement-Based Resolution process and approve the final agreement between the parties. Agreement-Based Resolution may be initiated at any time prior to the release of the final determination. Because Agreement-Based Resolution does not involve an investigation, there is not any determination made as to whether a Respondent violated this Policy. The process is described in more detail in Appendix C.

The Chief Title IX Coordinator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through an alternate process.

### **B. ACCEPTANCE OF RESPONSIBILITY**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Chief Title IX Coordinator is authorized to accept that admission, adopt it as the final determination, and collaborate with the appropriate sanctioning authority to administer sanctions. A Respondent who accepts responsibility waives their right to appeal. If the

Respondent rejects the final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

### **C. FORMAL RESOLUTION**

The College's formal Resolution Process includes two distinct investigation and decision-making procedures, as outlined in more detail below. The following applies to all formal resolutions:

#### **Notice of Investigations and Allegations**

Prior to an investigation, the Chief Title IX Coordinator will provide the Parties with a detailed written Notice of Investigation and Allegations (also referred to as "NOIA"). Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to notify the Chief Title IX Coordinator of any conflict of interest the Investigator(s) may have in advance of the interview process
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share the College work product obtained through the Resolution Process
- A statement, where applicable, that the Parties may have an advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that the Policy and these Procedures prohibit knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Investigation and Resolution Process
- An instruction to preserve any evidence that is directly related to the allegations

The NOIA will be written and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official College records, or emailed to the Parties' College-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered. The College's official method of communication is considered to be email and it will be used as the primary form of communication when possible.

### **Timeline**

The College strives to complete the investigation process within ninety (90) business days<sup>6</sup> from the date of the Notice of Investigation.

The timeline for any part of the Resolution Process may be extended for good cause by the Chief Title IX Coordinator. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The College shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The Chief Title IX Coordinator shall provide the Parties with periodic status updates, in writing.

### **Standard of Proof**

The standard of proof used in any investigation and decision-making process is the preponderance of the evidence standard. This requires the allegation(s) are more likely than not to have occurred.

### **Burden of Evidence**

The College has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from the College and does not indicate responsibility for a Policy violation.

### **Written Notice of Meetings**

The College will provide to a party or witness whose participation is invited, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

### **Evidence Gathering**

The Investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may

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<sup>6</sup> A business day is Monday through Friday when the College is in normal operations. All references to days in the Investigation and Resolution Procedures refer to business days unless specifically noted.

be conducted in person, or via video conference. When a party meets with an Investigator, the Investigator will ask questions related to the allegations in the complaint and a party is given the opportunity to speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This will include inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The Investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

### **Impermissible Evidence**

The following types of evidence, and questions seeking that evidence, are impermissible. This means this information will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Evidence provided to an employee designated by the College as Confidential under the Policy Against Sex Discrimination, unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure;
3. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in its investigation and resolution procedures; and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

## **INVESTIGATION AND DECISION MAKING PROCEDURES**

The College's Formal Resolution Process includes the following two investigation and decision making procedures:

1. Procedures covering all Prohibited Conduct matters **except for** sex-based harassment involving a student as a party; and
2. Procedures covering sex-based harassment involving a student as a party.

Only one of the above procedures will apply to a complaint, and will be determined based on the nature of the complaint and the parties involved.

## **Investigation & Decision Making Procedures For All Prohibited Conduct EXCEPT Sex-Based Harassment Involving A Student Party**

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 is limited to consulting privately with the party they accompany.

If the matter is not resolved informally and there is no acceptance of responsibility by the Respondent, 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 in collaboration with the Chief Title IX Coordinator when allegations involve a non-faculty employee. Allegations that a faculty member violated the Policy will be determined by the Provost, or their designee in collaboration with the Chief Title IX Coordinator. Allegations that a student engaged in sex discrimination (but not conduct that would constitute sex-based harassment) will be determined by the Dean of Students in collaboration with the Chief Title IX Coordinator. In all matters, the decision of the Office of Human Resources, the Provost, Dean of students, Chief Title IX Coordinator or their designees, will be final and is not subject to appeal. If, however, the Provost 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.

### **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 sanctions and corrective actions that may be imposed for any violation of this Policy includes:

- Verbal warning for employees
- Written warning for employees
- Probation for students
- Suspension for students
- 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 for employees
- 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.

### **Investigation & Decision Making Procedures In Cases Of Sex-Based Harassment Involving A Student**

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 Chief Title IX Coordinator will initiate and coordinate an investigation of a reported violation of the Policy as soon as practical, appointing one or more campus officials who have been trained to conduct investigations.

The nature and extent of the investigation will vary depending upon the circumstances, including whether the parties are amenable to pursuing an Informal Resolution. Both parties will have

equal procedural rights during the investigation and resolution of a complaint.

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.

Both parties 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 is limited to consulting privately with the party he/she accompanies.

Upon conclusion of the investigation, the investigator(s) will produce a written report that summarizes the relevant facts and any supporting documentation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence) and shall provide such report to the Chief Title IX Coordinator. This investigation report will be shared with the parties. Each party will have an opportunity to respond to the investigation report either in writing or before the Hearing Panel. Written responses must be received by the College within 10 business days after either party has received the investigation report. The investigation report is treated as a confidential document, and is intended to be shared only with individuals who have a "need to know" its contents. All individuals are expected to honor the confidential nature of the report. Disciplinary action may be taken in the event the confidential nature of the report is disregarded by a party or individual in the proceeding.

### **Notice of Hearing**

The Chief Title IX Coordinator or their designee will provide any written statements from the Complainant and Respondent along with the Investigation Report to the Chair of the Hearing Panel. Both parties will be informed in writing of the date, time, and location of the hearing and will be informed of the names of persons serving on the Hearing Panel. The parties will be given at least 5 business days advance notice of the hearing unless the Chief Title IX Coordinator determines that less time is appropriate or required in a given situation. If the Complainant elects

not to participate in a hearing, the College reserves the right to take the matter to a hearing.

Either party may request that the hearing be rescheduled at any time and must specify the reasons for the request. The Chief Title IX Coordinator or their designee for the case will determine whether to grant the request, and will base the decision on factors such as the time of the request and the impact the requested change will have on all other parties and witnesses, as well as the Hearing Panel.

Either party may ask that a member of the Hearing Panel, the sanctioning official (the Dean of Students), or the appeal official be removed if the party believes that person has a conflict of interest or cannot be fair and impartial. These requests must describe the reason for the challenge and must be received in writing by the Chief Title IX Coordinator or their designee within 3 business days of notification of the Hearing Panel members. The Chief Title IX Coordinator shall determine whether the challenge is valid and to make changes to the Hearing Panel, the sanctioning official, or the appeal official.

### **Composition of the Hearing Panel**

Hearings to address complaints alleging violations of the Policy by students will be conducted by a Hearing Panel, except that the Dean of Students or their designee may conduct a hearing in extraordinary circumstances if the Hearing Panel cannot reasonably be convened or if the College determines that an alternative process is appropriate under the circumstances. The Hearing Panel shall consist of three persons that are drawn from the College's Committee on Harassment and Discrimination, which consists of faculty members and staff members from the College community who have received proper training. One of these three persons will be designated as the Chair of the Hearing Panel.

### **Pre-Hearing Meeting**

The Chief Title IX Coordinator or their designee will offer to meet individually with the parties to answer any questions and explain the process as soon as possible after issuing the notice of hearing.

Each party may choose to have an Advisor of their choice accompany them to the hearing and any related meeting or proceeding. An Advisor may speak privately to their advisee, but an Advisor may not present evidence, question witnesses, or otherwise participate directly in the hearing or related meeting. This Advisor does not represent a party at the hearing and does not have an active voice during the proceedings, but can provide advice during the hearing or during adjournments and breaks to their advisee only.

### **Witness, Impact, & Character Statements**

Each party may submit a list of proposed witnesses to the Chief Title IX Coordinator or their designee within seven (7) business days after the College has delivered the investigative report. Character witnesses are not allowed. If a party requests that a witness be heard at the hearing and that individual was not interviewed in the course of the investigation, the party must provide in writing a rationale for including that witness. The Chief Title IX Coordinator or their designee will determine whether that witness may be called, or will ask that the investigator interview the witness as well. If a witness cannot or feels that s/he should not appear during the hearing s/he

must submit a short written explanation to the Title IX Coordinator at least 3 business days prior to the hearing. The final approved witness list will be shared with the parties at least 2 business days prior to the Hearing.

Both parties may prepare and present impact statements and letters attesting as to character in sealed envelopes to the Chair of the Hearing Panel at the outset of the hearing. These statements will be used solely by the Dean of Students for the purposes of determining any appropriate sanctions after the Hearing Panel concludes its deliberations.

### **Hearing Procedure**

Hearings will be closed to anyone who is not directly involved in the case as a party, Advisor of the party's choice, Investigator, Chief Title IX Coordinator or designee, Hearing Panel member, any witness invited by the Hearing Panel. The College recognizes that both parties have the right to engage legal representation at their own expense. Unless present as a party's Advisor of choice, attorneys are not permitted to be present during a Hearing Panel proceeding. The College may at its discretion designate its own attorney to be present or otherwise available during proceedings before the Hearing Panel and provide legal counsel to the Chair and the Hearing Panel members. The Chair of the Hearing Panel will determine which witnesses to invite to the hearing in advance of the hearing. Witnesses will be present only during their period of testimony and questioning.

The Complainant or the Respondent may request to participate in the hearing through a method that limits or does not require physical presence in the hearing room, and any such request will be submitted to the Chief Title IX Coordinator or their designee for approval. For instance, a party could participate using technology or they may request the use of partitions in the hearing room. Witnesses may also participate using technology. Such requests must be approved in advance by the Chief Title IX Coordinator or their designee. The Complainant and Respondent will have equal access to information before and during the hearing. The College will arrange for audio-recording the entire Hearing; this recording will be the property of the College and is not distributed to the parties. The Hearing Panel's deliberations will not be recorded.

1. The hearing will begin with the Chair calling the hearing to order and explaining the process.
2. The Chair reminds the parties that the proceedings are confidential and asks each person present to state their name and role for the record.
3. The Chair confirms that both parties have had an opportunity to review the investigation report.
4. The Hearing Panel then questions the Complainant. The Respondent is not permitted to address the Complainant directly, but may present written questions for the Complainant to the Chair, who will determine whether the questions are relevant and appropriate and, if so, read them aloud for the Complainant to respond. The Chair will have the discretion to deny questions that are inflammatory or otherwise inappropriate. The Complainant will have the opportunity to share with the Hearing Panel any questions or comments related to the investigation report. The Hearing Panel will then call and ask questions of each witness for Complainant. Both parties will have the opportunity to ask relevant questions of any witnesses.

5. The Hearing Panel will question the Respondent and witnesses for the Respondent following the same process outlined in (4) above.
6. At the conclusion of the hearing, the Hearing Panel will meet in closed session to make a decision on the matter by majority vote. College counsel may remain in the room but will neither vote nor participate in the deliberations.
7. The Hearing Panel's decision will rest on whether or not the Respondent was found in violation of the Policy, based solely on the evidence presented at the hearing. The Hearing Panel will use a preponderance-of-the-evidence standard (i.e., whether it is more likely than not that the Respondent violated the Policy).
8. The Panel will notify the Chief Title IX Coordinator of its decision.
9. To the greatest extent possible, the Complainant and Respondent will be notified simultaneously of the outcome of the hearing within 24 hours of the conclusion of the Panel's deliberations.
10. Both during and after a hearing, neither the Respondent or the Complainant (or their advisors or representatives) may contact a member of the Hearing Panel about the hearing or the decision of the Hearing Panel. Any questions or concerns must be directed to the Chief Title IX Coordinator or designee and/or expressed in an appeal, as outlined below.

### **Sanctions & Corrective Action**

Upon reviewing the Hearing Panel's decision and any impact or character statements submitted by the Respondent and/or the Complainant, and/or, upon receiving an election to accept responsibility, the Dean of Students will determine what, if any, sanctions will be imposed and communicate that decision to the Chief Title IX Coordinator who will notify each party simultaneously in writing of any sanctions and when they go into effect, along with a description of the appeal rights of the parties. The College may designate an alternative individual for sanctioning should it determine that an alternative is required. The Complainant and the Respondent will be notified simultaneously in writing of the results of the hearing procedure, including sanctions and information about appeal rights, within 7 business days of a decision.

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 sanctions that may be imposed for any violation of this Policy are:

- Mandatory discrimination or harassment training or education
- Mandatory counseling
- Disciplinary hold on academic and/or financial records
- College campus access restrictions
- Housing restrictions on campus, class enrollment restrictions, campus restrictions
- Ineligibility to participate in co-curricular activities
- No Contact Directives
- Probation
- Suspension
- Dismissal from the College

The sanctions assigned to a student found responsible will depend on the full context in which the offense takes place. For instance, repeat offenders can expect to be assigned more severe sanctions than if they did not have prior offenses. Offenders who commit multiple offenses in a single episode can expect to be assigned more severe sanctions than they would have been assigned had they committed fewer offenses. The presence of aggravating factors such as the use of force, the use of a weapon, the involvement of multiple perpetrators, intimidation or intentional incapacitation will also lead to more severe sanctions.

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 no event will either party in matters involving an alleged violation of the Policy that involves sex discrimination, sexual harassment, or other sexual misconduct be required to abide by a nondisclosure agreement that would prevent disclosure of the outcome or of the alleged violation. 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 training and education.

## **APPEAL PROCESS**

Each party has the right to submit a written appeal to a Title IX Coordinator within seven (7) business days (a) of being notified of the Hearing Panel's decision or (b) of the Dean of Student's decision regarding sanctions, whichever comes later. Appeals may be filed only on grounds of (1) relevant, substantive and new information not reasonably available at the time of the hearing that could affect the outcome of the matter, (2) alleged bias for or against complainants or respondents generally or conflict of interest of the Title IX Coordinator, investigator(s), or decision-maker(s) that would change the outcome, or (3) material procedural error or irregularity that would change the outcome or (4) the sanction is disproportionate with the violation. **The appeal must specifically state the grounds upon which it is made.**

The Chief Title IX Coordinator will inform the parties whether the grounds for appeal have been met within 3 business days. The party that did not initiate the appeal will have 7 business days to submit a written response, at their choosing. Within 30 business days of the deadline for receiving this written response (a) the appeal will be reviewed by an Appeal Officer (b) the Appeal Officer will notify the parties in writing of the outcome of the appeal. Parties will be notified of the appeal decision in writing within 7 business days after the conclusion of the review. Appeal decisions by the Appeal Officer are final.

The appeal is not a de novo review, meaning the Appeal Officer will consider only the materials submitted by the parties and the record of the original hearing. If new and substantive evidence has arisen, the appeal can result in a remand of the case to the original hearing panel for reconsideration and a new determination.

## **FAILURE TO COMPLY/PROCESS INTERFERENCE**

All Parties are expected to comply with supportive measures, corrective actions, and sanctions. This includes, but is not limited to:

- Directives of no contact
- Failure to comply with interim/emergency removal
- Failure to adhere to terms of Informal Resolution
- Interference with the Investigation and Resolution process such as:
  - Destroying/concealing evidence
  - Providing false testimony or evidence
  - Intimidating witness or party

Failure to comply with a directive and/or interference with the process may result in additional sanctions. Students who fail to comply will be referred to the Dean of Students Office in accordance with the College's Code of Conduct.

## **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.

The hearing audio-recording and evidence presented at the hearing will be maintained by the Chief Title IX Coordinator and will be property of the College. If a student has been found responsible for violating the Policy, this finding remains a part of that student's conduct record. The finding is not referenced on a student's transcript.

## **PROHIBITION AGAINST UNAUTHORIZED DISCLOSURE OF INFORMATION**

Parties and Advisors are prohibited from disclosing information obtained by the College through the Resolution Process, to the extent that information is the work product of the College (meaning it has been produced, compiled, or written by Augustana College for purposes of investigation and resolution of a Complaint), without authorization. It is also a violation of College Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

## **PROHIBITION AGAINST RETALIATION**

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of behavior or conduct prohibited under this Policy. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege

secured by this Policy or by law, including Title IX or its regulations.

No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Adverse action does not include perceived or petty slights, or trivial annoyances.

It is not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under this Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **EDUCATIONAL PROGRAMMING**

The College will provide the following education programming designed to promote the awareness of sexual assault, domestic violence, dating violence and stalking.

### **Employees with Responsibility for Receiving Reports of Violations of this Policy; Providing or Referring Services to Victims; and/or Adjudicating Alleged Violations of this Policy**

- Training on at least an annual basis on the issues related to sexual assault, sexual violence, dating violence and stalking; and
- Training on at least an annual basis on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

### **Primary Prevention and Awareness Programs**

The College will provide primary prevention and awareness programs for all incoming students and new employees that includes the following:

- a statement that the College prohibits the offenses of discrimination, harassment, sexual assault, domestic violence, dating violence and stalking, and a description of the College's policies that prohibit this conduct;
- the definition of consent and inability to consent, in reference to sexual activity, as defined in this Policy and under Illinois law;
- the definition of discrimination, harassment, including sexual assault, domestic violence, dating violence, and stalking (or similar offenses) in this Policy and under Illinois law;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of discrimination, harassment, sexual assault, domestic violence, dating violence and stalking against a person other than such individual;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- the procedures that a Complainant/victim should follow if discrimination, harassment, sexual assault, domestic violence, dating violence and stalking has occurred, as described in this Policy, including options for a Complainant/victim to report such incidents to a Confidential Employee or other confidential resource;
- the possible sanctions and protective measures that the College may impose following a



final determination of a violation of College policy regarding discrimination, harassment, sexual assault, domestic violence, dating violence and stalking;

- the procedures for College disciplinary action in cases of alleged discrimination, harassment, sexual assault, domestic violence, dating violence and stalking, as described in this Policy, including the standard of proof that is used;
- information about how the College will protect the confidentiality of Reporting Parties, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the Reporting Party, to the extent permissible by law;
- information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for student and employee accusers and victims both on-campus and in the community; and
- information about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by a Complainant and if such accommodations are reasonably available, regardless of whether the Complainant chooses to report the crime to campus security or local law enforcement.

### **Ongoing Prevention and Awareness Campaigns**

The College will also provide ongoing prevention and awareness campaigns for students and employees that include the information covered in the primary prevention and awareness programs.

### **PROCEDURE REVIEW & REVISION**

These Investigation and Resolution Procedures will be reviewed and updated regularly by the Chief Title IX Coordinator. The Chief Title IX Coordinator will submit modifications to these Procedures in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require procedural alterations not reflected in this document.

Procedures in effect at the time of its implementation will apply. The Policy definitions in effect at the time of the conduct will apply even if the Policy is changed subsequently.

Investigation and Resolution Procedures may be revised at any time without notice. All revisions supersede prior procedures and are effective immediately upon posting to the Augustana College website.

Procedures updated: August 1, 2024

## **APPENDIX A: STATEMENT OF THE PARTIES' RIGHTS**

### **Under this Policy and procedures, the Parties have the right to:**

- An equitable investigation and resolution of all credible allegations of prohibited sex discrimination when reported in good faith to College officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Have all personally identifiable information protected from the College's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by College officials.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without College pressure, if Informal Resolution is approved by the Chief Title IX Coordinator.
- Not be discouraged from reporting sProhibited Conduct to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College in notifying such authorities, if the party chooses.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by the College.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- A College-implemented no-contact directive or a no-trespass directive against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of sex discrimination. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available.
- Have the College maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures.
- Receive sufficiently advanced written notice of any Investigation and Resolution Process meetings or interviews.
- Identify and have the Investigators and/or Hearing Panel question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Hearing Panel with a list of questions that, if deemed relevant and permissible, may be asked of any party or witness.

- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and be given 10 business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report and to have 7 business days prior to the hearing for review.
- Be informed of the names of all witnesses whose information will be participating in the investigation and or hearing.
- Regular status updates on the investigation and/or resolution Process.
- Have reports of alleged Policy violations addressed by College officials who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any live hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the College's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

## **APPENDIX B: ADVISORS OF CHOICE IN THE INVESTIGATION AND RESOLUTION PROCESS**

### **Advisor's Role in the Resolution Process**

Advisors<sup>7</sup> should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

### **Records Shared with Advisors**

Advisors are provided the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the College shares with them. Advisors may not disclose any College work product or evidence the College obtained solely through the Investigation and Resolution Process for any purpose not explicitly authorized by the College.

Advisors will be asked to sign an Advisor Agreement. The College may decline to share any information, evidence and/or materials with any Advisor who has not completed the Agreement. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Colleges confidentiality expectations.

### **Advisor Expectations**

The College generally expects an Advisor to adjust their schedule to allow them to attend Investigation and Resolution Procedures meetings/interviews/hearings when planned. The College may reschedule meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings.

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<sup>7</sup> If a non-student is a party to an allegation involving a student as the Complainant or Respondent, the non-student will be provided the same opportunity to be accompanied by an Advisor of choice to any meeting or proceeding.

### **Advisor Policy Violations**

Any Advisor who oversteps their role, who shares information or evidence in a manner inconsistent with the Policy and these Procedures, or who refuses to comply with the College's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor. Subsequently, the Chief Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## APPENDIX C: AGREEMENT-BASED INFORMAL RESOLUTION

### Initiating the Agreement-Based Resolution Process

Prior to the initiation of Agreement-Based Resolution, the Chief Title IX Coordinator will provide the Parties written notice that includes:

1. The specific allegation and the specific conduct that is alleged to have occurred;
2. The requirements of the Agreement-Based Resolution process;
3. Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared, and whether the College could disclose such information for use in a future Resolution Process, including an investigation and Resolution Process arising from the same or different allegations, as may be appropriate;
4. Notice that an agreement resulting from the Agreement-Based Resolution process (an Agreement) is binding only on the parties and is not subject to appeal;
5. Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
6. A statement indicating that the decision to participate in the Agreement-Based Resolution process does not presume that the conduct at issue has occurred;
7. A statement that the Respondent is presumed not responsible for violating this Policy, unless Respondent admits to violations of this Policy;
8. An explanation that all parties may be accompanied by an Advisor of their choice, who may be a parent, colleague, friend, or attorney;
9. A statement that any party has the right to withdraw from the Agreement-Based Resolution process and initiate or resume investigation and resolution procedures at any time before agreeing to a resolution;
10. Information regarding Supportive Measures, which are available equally to the parties; and
11. The potential terms that may be requested or offered in an Agreement-Based Resolution Agreement.

### Facilitating an Agreement

If all Parties are willing to explore Agreement-Based Resolution, the Chief Title IX Coordinator will then meet separately with each party to discuss the Agreement-Based Resolution process and facilitate an Agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Agreement-Based Resolution process, or the Chief Title IX Coordinator does not believe that the terms of the Agreement or continuing the Agreement-Based Resolution process is appropriate, the Chief Title IX Coordinator may decide that the reported conduct will instead be addressed through the investigation and Resolution Process. The Chief Title IX Coordinator will inform the parties of such a decision, in writing.

Agreement-Based Resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. The Chief Title IX Coordinator may serve as the facilitator, subject

to these restrictions. Investigators or Decision Makers for the matter may not facilitate an Agreement-Based Resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

1. One of the parties will change classes or housing assignments;
2. The Parties will not communicate or otherwise engage with one another;
3. Completion of a training or educational project by the Respondent;
4. Engage in a restorative justice process or facilitated dialogue; and/or

To facilitate Agreement-Based Resolution, information shared by any party will not be used in any related Resolution Process of the same complaint under this policy. No evidence concerning the allegations obtained within the Agreement-Based Resolution process may be disseminated to any outside person, provided that any party to the Agreement-Based Resolution process may generally discuss the allegations under investigation with a parent, Advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an Agreement-Based Resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

### **Finalizing the Resolution Agreement**

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Chief Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once an Agreement is signed, no appeal is permitted. The Agreement-Based Resolution process is generally expected to be completed within thirty (30) days and may be extended by the Chief Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate. Any violations of the terms of the Resolution Agreement may result in disciplinary action.