

Defiance College Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy

INTRODUCTION AND RATIONALE FOR POLICY

Defiance College is a community of learners dedicated to nurturing the whole person in each of its members and affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. Defiance College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, sexual misconduct and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, Defiance College has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status. Defiance College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in what is often a difficult time for all those involved.

Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment advancement. Sometimes, discrimination takes the form of harassment or, in the case of sex-based discrimination, encompasses sexual violence, stalking, sexual exploitation, or intimate partner violence. When violation of these anti-discrimination policies is alleged, the allegations are subject to resolution using Defiance College's resolution process as detailed below.

When the responding party is a member of the Defiance College community, the resolution process is applicable regardless of the status of the reporting party, who may or may not be a member of the Defiance College community. This community includes, but is not limited to, students,¹ student organizations, faculty, administrators, staff, guests, visitors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the climate, all of which may be addressed and investigated in accordance with this policy.

TITLE IX COORDINATOR AND TEAM

The Dean of Student serves as the Title IX Coordinator and ADA/504 Coordinator and coordinates the College's equity and Title IX compliance and the Defiance College policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to investigation, resolution, and implementation of corrective measures and monitoring to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

¹ For the purpose of this policy, the Defiance College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and/or who maintains an ongoing relationship with the Defiance College.

Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and acts to ensure that all Defiance College representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Defiance College President at 419-783-2300. Concerns of bias or a potential conflict of interest by any other administrator involved in the resolution process should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Defiance College President at 419-783-2300. Reports of misconduct or discrimination committed by any other administrator involved in the resolution process should be reported to the Title IX Coordinator.

Administrative Contact Information

Allegations of violations of policy, or inquiries about or concerns regarding this policy and procedure, may be made internally to college Title IX Coordinator:

Lisa Marsalek, Vice President for Enrollment Management & Student Success and Dean of Students

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or lmarsalek@defiance.edu

Trained Deputy Title IX Coordinators who can also offer assistance are available in the following offices:

Mary Burkholder, Director of Human Resources

106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2360 or mburkholder@defiance.edu

Mercedes Clay, Assistant Dean of Student Engagement and Director of Intercultural Relations

132 Hubbard Hall, 701 N. Clinton, Defiance, OH 43512

(419) 783-2362 or mclay@defiance.edu

Jennifer Walton, Director of Residence Life

126 Hubbard Hall, 701 N. Clinton St, Defiance, OH 43512

(419) 783-2563 or jwalton@defiance.edu

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR), Cleveland Office

600 Superior Avenue East, Suite 750

Cleveland, OH 44114

(216) 522-4970

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact/>

Reporting Discrimination, Harassment, and/or Retaliation

Reports of discrimination, harassment and/or retaliation may be made using any of the following options:

- 1) Report directly to the Title IX Coordinator or Deputy Coordinators:

Lisa Marsalek, Vice President for Enrollment Management & Student Success and Dean of Students

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or lmarsalek@defiance.edu

Mary Burkholder, Director of Human Resources

106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2360 or mburkholder@defiance.edu

Mercedes Clay, Assistant Dean of Student Engagement and Director of Intercultural Relations

132 McCann Center, 701 N. Clinton, Defiance, OH 43512

(419) 783-2362 or mclay@defiance.edu

Jennifer Walton, Director of Residence Life

126 McCann Center, 701 N. Clinton St, Defiance, OH 43512

(419) 783-2563 or jwalton@defiance.edu

- 2) Report online, using the reporting form posted at <https://www.defiance.edu/communication-information.html> All reports are acted upon promptly, and every effort is made by the College to preserve the privacy of reports.²

Anonymous Reporting

Reports may also be made anonymously, without identification of the reporting party. Anonymous reports will be preliminarily investigated to the extent possible, both to assess the underlying allegation(s) and to determine if remedies can be provided. However, anonymous complaints typically limit the College's ability to investigate, respond, and provide remedies, depending on what information is shared. Additionally, all employees of the College, with the exception of those who are designated as confidential

² For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to an allegation will be shared with a limited number of Defiance College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College's response to allegations under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the College's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The College has designated individuals who have the ability to have privileged communications as confidential resources. For more information about confidential resources, see pages 15-16. When information is shared by an individual with a confidential resource, the confidential resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

resources, are mandated reporters and must promptly share all known details of a report with the Title IX Coordinator.

Confidentiality and mandated reporting are addressed more specifically beginning on pg. 15.

Time Limits on Reporting

There is no time limitation on reporting allegations to the Title IX Coordinator.³ However, if the responding party is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited. Acting on allegations significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer resources and/or remedies, and/or engage in informal or formal action, as appropriate. When a significant time delay impacts the reporting of alleged misconduct, the College will apply the policy in place at the time of the alleged misconduct, and the procedures in place at the time the misconduct is reported.

JURISDICTION

This policy applies to behaviors that take place on the campus or property owned or controlled by the College, and at College-sponsored events. It may also apply to off-campus and online conduct when the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. Regardless of where the conduct occurred, the College will address all allegations to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus program or activity. A substantial College interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

If the responding party is unknown or is not a member of the Defiance College community, the Title IX Coordinator will assist the reporting party in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report. In addition, the College may take other actions as appropriate to protect the reporting party against such third parties, such as barring the latter from College property and/or events. All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers.

When the responding party is enrolled in or works at another College, the Title IX Coordinator can assist the reporting party in liaising with the appropriate individual for that College, as it may be possible to allege violations through that College's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee reporting party who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating organization may give recourse to the reporting party. Further, even when the responding party is not a member of the College's community, remedies and resources can be accessed by contacting the Title IX Coordinator or the Defiance College Counseling Center.

1. Notice of Nondiscrimination

Defiance College adheres to all federal and state civil rights laws prohibiting discrimination in private Defiance Colleges of higher education. Defiance College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, ethnicity, religion, national origin, sex, gender, gender identity/expression, sexual orientation, age, disability, genetic information, marital status, veteran status or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately addressed and remedied by the College according to the Equity Resolution Process described below.

Defiance College will promptly and equitably respond to all reports of sexual or other discrimination in order to eliminate the misconduct and/or harassment, prevent its recurrence, and remedy its effects on any individual or the community.

2. College Policy on Accommodation of Disabilities

Defiance College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the Defiance College, regardless whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Title IX Coordinator has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations for both students and employees will be addressed using the procedures below. For details relating to disabilities accommodations in the College's resolution process, see page 44.

a. Students with Disabilities

Defiance College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Accessibility Services Coordinator who coordinates services for students with disabilities. The Accessibility Services Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

b. Employees with Disabilities

Pursuant to the ADA, Defiance College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Director of Human Resources and providing appropriate documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

3. College Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy.

a. Discriminatory and Bias-Related Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by College policy as well as the law. Defiance College does not tolerate discriminatory harassment against any employee, student, visitor or guest. Defiance College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When discriminatory harassment rises to the level of creating a hostile environment, College may also impose sanctions on the harasser through application of the resolution process below.

A hostile environment is one that unreasonably interferes with, limits, or denies an individual's educational or employment access, benefits, or opportunities.⁴ This discriminatory effect results from

⁴ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment against Students at Educational Colleges Investigative Guidance. The document is available at: <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

harassing verbal, written, graphic, or physical conduct that is severe or persistent or pervasive, **and** objectively offensive.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under College policy, but will be addressed through respectful conversation remedial actions, education, effective conflict resolution mechanisms or other information resolution mechanisms. For assistance with conflict resolution or other informal resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Students.

b. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Ohio regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Defiance College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training may be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- severe, or
- persistent
- or pervasive, and
- objectively offensive, such that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the college's educational, employment, social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes *quid pro quo* sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of an individual's work or educational development or performance, or evaluation thereof.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner

violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with them in exchange for a good grade. This constitutes Sexual Harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes around campus to an email list they created, even after being asked to stop. Because of these jokes, one email list recipient avoids the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are repeatedly displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance, in the presence of other employees.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. She inquires about explicit details and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former partner to the clear discomfort and frustration of the partner, turning the former partner into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is Sexual Harassment, it is also a form of sexual violence.

Unwelcomeness and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. While some of the policies listed below may have parallels in criminal law, Defiance College has defined categories of sex/gender discrimination as forms of sexual misconduct for which disciplinary action under this policy may be imposed.

Generally speaking, the College considers non-consensual sexual intercourse policy violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact, and/or stalking based on the facts and circumstances of the particular allegation.

Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Violations include but are not limited to:

1. Sexual Harassment (as defined in section b above)
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation
5. Force and Consent
6. Intimate Partner Violence
7. Stalking

Use of alcohol or other drugs will never function to excuse any behavior that violates this policy. For reference to the pertinent State of Ohio statutes on sex offenses, please see <http://codes.ohio.gov/orc/2907>

NON-CONSENSUAL SEXUAL CONTACT⁵

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, groin, genitals or mouth, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force⁶

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

⁵ The state definitions for sexual offenses can be found at <http://codes.ohio.orc/2907> , which are applicable to criminal prosecutions for sexual assault in Ohio, but differ from the definition used on campus to address policy violations.

⁶ The use of force in non-consensual sexual intercourse and contact-based incidents is not inherently “worse” than incidents of non-consensual sexual intercourse/contact without force. However, the use of physical force constitutes a stand-alone, non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive conduct.

SEXUAL EXPLOITATION

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaging in sexual acts without the consent of the person being observed).
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
- Prostitution or prostituting another.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances (not including streaking, which may be disruptive conduct under the Code of Student Conduct), including unwelcome sexting.

FORCE AND CONSENT

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that is intended to overcome resistance or that produces consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Previous relationships or prior consent cannot imply consent to future sexual acts.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

In order to give consent, one must be of legal age.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. A person violates this policy if they engage in sexual activity with someone they know to be, or should know to be, physically or mentally incapacitated.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, sleep or unconsciousness, involuntary physical restraint, and/or the consumption of incapacitating drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>

Intoxication of the Responding Party

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party. The question of whether the responding party should have known of the incapacity is an objective question about what a reasonable person, exercising sober, good judgment, would have known, in the same or similar circumstances.

Protection of Minors

In Ohio, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, could require an immediate report to the applicable child welfare agency, and represents a potential violation of this policy, even if the minor welcomed the sexual activity.

Employees who witness or otherwise have reasonable cause to believe that an incident of sexual or physical abuse involving a minor has occurred at the College or in a College-sponsored program or activity, must immediately report that knowledge or belief. This reporting obligation exists regardless of whether or not the alleged perpetrator is an employee of the College.

Examples

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the college Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the college. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be**

aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the college expects.**

INTIMATE PARTNER VIOLENCE

Intimate Partner Violence (commonly referred to as dating, domestic or relationship violation) is defined as violence or abuse between those in an intimate relationship to each other⁷;

Examples:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

STALKING

Stalking 1:

- A course of conduct
- Directed at a specific person
- On the basis of actual or perceived membership in a protected class
- That is unwelcome, AND
- Would cause a reasonable person to feel fear

Stalking 2:

- Repetitive and Menacing
- Pursuit, following, harassing and/or interfering with the peace and/or safety of another

⁷ The definition provided here is model policy language from ATIXA. The state legal definitions can be found here <http://codes.ohio.gov/orc/2907> .

Examples of Stalking:

- Students A and B were friends with benefits. Student A wanted a relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered his social media accounts were being accessed and things were being posted, snapped, and messaged as if they were from him, but they were not. Whoever accessed his account posted a picture of a penis, making it look as if he had sent out a picture of himself, though it was not his penis. This caused him considerable embarrassment and social anxiety. He changed his passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on his phone and a keystroke recorder on his laptop, both of which were being used to transmit his data to a third party.
- A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together. Stalking 1.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together." Stalking 2.

4. Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

1. **Harm to Persons**, intentional or recklessly causing physical harm or endangering the health or safety of any person;
2. **Threat**, defined as written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property;
3. **Discrimination**, defined as any act or failure to act that is based upon an individual or group's actual or perceived status (sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status) that is sufficiently severe that it limits or denies the ability to participate in or benefit from the College's educational program or activities.
4. **Harassment**. Any unwelcome conduct based on actual or perceived status including: sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status;
5. **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;

6. **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
7. **Bullying and Cyberbullying** defined as are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.

Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed Civil Rights Offense range from Warning through expulsion (students) or termination of employment.

Bystander Intervention

The College expects all community members to take reasonable and prudent actions to prevent or stop an act of sex discrimination or misconduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. The College will support its members who choose to intervene in this fashion.

5. Retaliation

Retaliation is defined as any materially adverse action taken because of a person's participation in a protected activity. Protected activity includes reporting an incident that may implicate this policy, participating in the resolution process, supporting a reporting or responding party, or assisting in providing information relevant to an investigation. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the responding party, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

6. Confidentiality and Reporting of Offenses Under This Policy

All Defiance College employees (faculty, staff, Coordinators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a reporting party has requested this information be shared. If a reporting party expects formal action on their allegations, reporting to any employee can connect them with resources to report

crimes and policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the reporter), who will take action when an incident is reported to them. The following describes the reporting options at Defiance College:

a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Director of Counseling & Accessibility Services, Lynn Braun: 419-783-2548
- Accessibility Services Coordinator and Staff Clinician, Kris Knight 419-783-2445
- To access a SANE (Sexual Assault Nurse Examiner) after normal business hours, contact Lynn Braun, confidential Victim's Advocate: 419-290-9839
- Four County SART Program: 1-800-782-8555
- Ohio Sexual Violence Helpline 1-888-OHIO-HELP
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies,
 - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors (or the Employee Assistance Program for employees) are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit semesterly anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

b. Formal Reporting Options

All Defiance College employees have a duty to report harassment or discrimination of which they become aware, unless they fall under the "Confidential Reporting" section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result without formal college action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the reporting party does not wish to do so. Note that the College's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the Defiance College to proceed with an investigation and/or the Resolution Process. The goal is to provide the reporting party with as much control over the process as possible, while respecting the College's obligation to protect its community.

In situations involving pattern, predation, threat, minors, weapons, and/or violence, or where the allegations involved serious or pattern employee misconduct, the College may be unable to fully honor a request for confidentiality and/or informal resolution.

In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. If the reporting party elects to take no action, they can change that decision later if they decide to pursue a formal process at a later date. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Dean of Students, Residence Life, CARE team and Counseling Center. Information will be shared as necessary with investigators/decision-makers, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <https://www.defiance.edu/communication-information.html>. Note that these anonymous reports may prompt a need for the Defiance College to investigate.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Lisa Marsalek, Vice President for Enrollment Management & Student Success and Dean of Students
128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512
(419) 783-2587 or lmarsalek@defiance.edu

Failure of a Mandated Reporter to Report

Failure of a non-confidential employee, as described in this section, to report an incident of sex/gender harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

7. Federal Timely Warning Obligation

Parties reporting sexual misconduct, intimate partner violence, and/or stalking should be aware that under the Clery Act, Defiance College Coordinators must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The College will undertake reasonable efforts to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

8. False Allegations

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action. Additionally, witnesses and parties providing knowingly false evidence or deliberately misleading an official conducting an investigation will be subject to discipline under College policy.

9. Amnesty for Reporting Parties and Witnesses

The College encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The College recognizes that an individual who has been drinking alcohol or using drugs at the time of an act of sex discrimination may be hesitant to make a report because of potential consequences for his/her/their own conduct. An individual who reports sex discrimination, either as a Reporting Party or a third party witness, will not be subject to disciplinary action by the College for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

10. Parental Notification (allegations involving students)

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or student conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations.

When a student is non-dependent, the College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

11. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include all criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA⁸-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the Dean of Students regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. This reporting helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety.

⁸ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

Campus Security Authorities include: cabinet, student affairs/student conduct staff, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

The information to be shared includes the date, the general location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the reporting party and may be done anonymously.

RESOLUTION PROCESS FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF DISCRIMINATION.

Defiance College will act on any formal or informal allegation/notice of violation of the policy on Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy (“the Policy”) that is received by the Title IX Coordinator or any faculty, staff, or other employee, with the exception of confidential resources, as articulated in the Policy.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, or faculty members.

These procedures may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g. vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and staff handbooks.

These procedures, like the Policy, are global in scope. While they are informed by various laws (such as Titles VI, VII, and IX, as well as state law) and can be used to satisfy these laws, the procedures stand alone as the College’s resolution mechanism for the conduct covered by the Policy, whether state or federal law applies or not. Law sets the floor for these procedures, but the College has determined the resolution mechanisms that are best suited to its community.

Overview

Upon receipt of an allegation or notice to the Title IX Coordinator of an alleged violation of the Policy, Defiance College initiates this resolution process, which involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated.

If so, the College will initiate one of three responses: a remedial response because the reporting party does not want to proceed formally; an informal resolution; or a formal resolution including an investigation and an opportunity for a hearing. A formal resolution is thorough, reliable, impartial, prompt, fair, and as private as possible.

The investigation and resolution process determine whether the Policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent its recurrence, and address its effects.

1. Resolution Process

If at any point in the Resolution Process the evidence indicates that an incident does not rise to the level of discrimination or harassment but could be in violation of other College policies, the Title IX Coordinator may refer the matter to the appropriate office (e.g. Student Life, Human Resources) for further investigation and resolution.

Roles of Resolution Pool Members

The resolution process relies on a pool of officials (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to campus, prospective students, their parents, and prospective employees. The list of Pool members can be found in the Appendix of this policy. Members of the Pool are trained annually in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake for and initial guidance pertaining to allegations
- To perform or assist with preliminary inquiries
- To investigate allegations
- To serve as a Hearing administrator as decision-makers for allegations and/or sanctions

Appointment of Pool Members

The Title IX Coordinator, in consultation with the President, appoints the pool, which acts with independence and impartiality. While members of the pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of assignment of roles may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

Training of Pool Members

The Pool members receive annual training. This training includes, but is not limited to: the College’s Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); implicit bias; disparate treatment and impact; reporting, confidentiality, and privacy requirements; applicable laws, regulations, and federal regulatory guidance; how to implement appropriate and situation-specific remedies; how to investigate in a thorough, reliable, and impartial manner; how to uphold fairness, equity, and due process; how evidence is weighed; how to conduct questioning; how to assess credibility; impartiality and objectivity; how to render findings and generate clear, concise, evidence-based rationales; and how to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations. Specific training is also provided for appeals officers, intake personnel, advisors, and chairs. All Pool members are required to attend this annual training.

2. Reporting Misconduct

Any member of the College community (i.e., student, faculty, staff, volunteer), guest, or visitor who believes that the policy on Equal Opportunity, Harassment, Discrimination and Sexual Misconduct has been violated should contact the Title IX Coordinator and/or deputy Coordinators. If the conduct is criminal in nature, any member of the community, including guests and visitors, may contact local police to make a report. It is also possible for employees to notify a supervisor, or for students to notify a Coordinator or faculty member. These individuals will notify the Title IX Coordinator. The College website also includes a reporting form at <https://www.defiance.edu/communication-information.html> which may be used to initiate the resolution process.

Timeliness – To promote timely and effective review, the College strongly encourages the Reporting Person and other persons with knowledge of possible violations of this policy to make reports as soon as possible following the occurrence of a sexual assault. A delay in reporting may impact the College’s ability to gather relevant and reliable information. It may also impact the College’s ability to take disciplinary action against a student for has graduate or permanently terminated enrollment.

All employees (except those whom the College has designated as confidential) who receive notice of a potential violation of College harassment or discrimination policies are expected to promptly contact the Title IX Coordinator within 24 hours of becoming aware of a report or incident. Specific information on any allegations received by any party will be reported to the Title IX Coordinator, and every effort will be made to maintain the privacy of those initiating a report.

The College encourages reporting parties to pursue their complaints through both the Defiance College resolution process and through the criminal justice system. The College will provide Reporting Persons with information concerning their options and rights and will assist them in making reports to law enforcement if they wish to do so. The Defiance Police Department, which can be reached at (419) 784-5050, can explain the procedures for pursuing a criminal investigation. The Defiance Police Department will investigate every incident reported to police to determine if a crime has been committed. The decision to file a complaint with the Defiance Police is entirely the victim’s choice. Reporting to the police is not necessary for a victim to receive counseling or other supportive services.

Preservation of Information and Tangible Material – Preservation of information and tangible material relating to Sexual Assault is essential for both law enforcement and campus disciplinary investigations. Reporting Persons, Responding Persons, witnesses or others reporting possible violations of this policy, are encouraged to preserve all information and tangible material relating to the incident, such as electronic communications (e.g. emails and text messages), photographs, clothing, bedding, and medical information. In the case of medical information, prompt examinations can be crucial.

3. Interim Actions and Responsive Measures

Defiance College will offer and implement appropriate and reasonable responsive, supportive, and/or protective measures to reporting and responding parties upon notice of alleged harassment, discrimination, and/or retaliation.

These interim actions are intended to support both the reporting and responding parties; protect and preserve access to educational and employment programs and activity; address the short-term effects of harassment, discrimination, and/or retaliation; protect the safety of all parties; and prevent further violations.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup
- Altering campus housing situation
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus escorts

- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support
- Offering adjustments to academic deadlines, course schedules, etc.

The College will maintain as confidential the supportive or protective measures, provided that confidentiality does not impair the College's ability to provide the supportive or protective measures. Reasonable measures taken will be at no cost to the parties.

The College will use the least restrictive means possible when determining appropriate interim actions to ensure the continued safety and health of the reporting and responding parties and/or the College's community and to ensure as minimal an academic impact on the reporting and responding parties. The College will implement measures that do not unreasonably burden the other party and will regularly re-evaluate the actions to determine the necessity of their continued implementation.

The College may interim suspend a student or student organization, or place an employee on paid or unpaid administrative leave, pending the completion of investigation and resolution procedures when, in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the College's community may be jeopardized by the on-campus presence/on-going activity of the responding party. The College may implement such measures if, after engaging in an individualized analysis, the College determines that the immediate threat to any member(s) of the College's community justifies removal of the individual.

In all cases in which an interim action/suspension is imposed, the student, employee, or two (2) representatives from a student organization will be given the option to meet with the Title IX Coordinator prior to such action/suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the action/suspension should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), rather an administrative process intended to determine solely whether the interim action/suspension is appropriate. The Title IX Coordinator has sole discretion to implement or stay an interim action/suspension and to determine conditions and duration. Violation of an interim action under this policy will be grounds for discipline which may include expulsion or termination. During an interim action/suspension, a student or employee may be denied access to any or all of the following: College housing/campus/facilities/events.

The College will implement the least restrictive interim actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these measures may include restrictions from classes and/or all other College activities or privileges for which the student/employee might otherwise be eligible. For example, such measures could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of College facilities or equipment, allowing a student to withdraw or take incompletes without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student organizational leadership, or intercollegiate athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the reporting and responding parties.

4. Preliminary Inquiry

Following receipt of notice or an alleged violation of the College's harassment or non-discrimination policies, the Title IX Coordinator⁹ engages in a preliminary inquiry to determine if there is reasonable cause to believe the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct policy has been violated. The preliminary inquiry is typically 1-5 days in duration.

This inquiry may also help the Title IX Coordinator determine if the allegations involve violence, threat, pattern, predation, minors, and/or the use of a weapon, in the event that the reporting party has asked for no action to be taken.

In any situation in which violence, threat, pattern, predation, minors, and/or the use of a weapon is **not** evidenced, the Title IX Coordinator may respect a reporting party's request not to pursue the matter through the formal resolution process and will investigate informally only so far as necessary to determine appropriate remedies or refer the matter for alternate resolution options.¹⁰

If the Title IX Coordinator determines that Title IX is not applicable to allegations of sexual misconduct, but the College still intends to apply these policies and procedures to resolve the misconduct allegations, the Title IX Coordinator will document that it has been determined that Title IX is inapplicable but that College policies and procedures will nevertheless be applied.

Compelling Formal Proceedings

The College reserves the right to initiate formal resolution proceedings without a report or participation by the reporting party when deemed necessary by the Title IX Coordinator, usually to protect the community in situations that evidence a compelling safety risk.

When the College proceeds, the reporting party (or their advisor) may have as much or as little involvement in the process as they wish. The reporting party retains all rights of a reporting party under this process irrespective of their level of participation. Typically, when the reporting party chooses not to participate, the advisor is appointed as proxy for the reporting party throughout the process, acting to ensure and protect the rights of the reporting party. When the Title IX Coordinator believes it is necessary to move the process forward but also knows that credibility will be a key consideration in the formal process, the Coordinator must balance the College's need to move forward without the involvement of the reporting party against the rights of the responding party, who is entitled to a fair process in accordance with these procedures.

When the reporting party wishes to proceed or the College determines it will proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct that the allegation be resolved through one of the following processes, discussed briefly here and in greater detail below:

- Informal Resolution – typically used for less serious offenses and only when the reporting and responding parties agree to informal resolution or the responding party is willing to accept responsibility for a violation. A preliminary inquiry will still typically precede this step.

⁹ If circumstances require, the President or Title IX Coordinator may designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

¹⁰ In cases where the responding party is an employee, the College may be less inclined to abide by the reporting party's wishes not to proceed.

- Formal Resolution – investigation and a hearing before neutral, impartial decision-makers, subject to appeal and final determination. Remedies to restore those impacted will be implemented upon a finding of policy violation.

Discretion to Terminate the Process at Any Time

The process followed considers the preferences of the parties, but is ultimately determined by the Title IX Coordinator. If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end and the parties will be notified.

The reporting party may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances. Other appeal options do not apply.

5. Cross-claims

The College permits the filing of cross-claims but uses the preliminary inquiry, described above, to assess whether the allegations are made in good faith. Cross-claims by the responding party may be made in good faith, but are, on occasion, also made for purposes of retaliation. The College is obligated to ensure that the resolution process is not abused for retaliatory purposes.

Cross-claims determined to have been reported in good faith will be processed using the resolution procedures below. Investigation of such claims may take place after resolution of the underlying allegation, in which case a delay may occur. Cross-claims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When cross-claims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this policy.

6. Advisors

Reporting and responding parties may have an advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available. While it is not advisable to choose as an advisor someone who is also a witness in the process, should a party decide to do so, the potential for bias and conflict-of-interest of the witness can and will be explored by the Hearing Officer/Decision-Maker.

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise and consult with them throughout the resolution process. The parties may choose advisors from inside or outside the College community or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a

presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or other decision-makers except during a hearing proceeding, as described below.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation. While the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or quietly by passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks to step out of meetings to allow for private consultation.

Advisors may be given an opportunity to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the College's investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated or replaced by a different advisor.

The College expects that the parties may wish to have the College share documentation and evidentiary information related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process. The College also provides a consent form that authorizes the College to share such information directly with the advisor. The parties must either complete this form or provide similar documentation consenting to a release of information to the advisor before the College is able to share records with an advisor.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by College. College may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College expects an advisor to adjust their schedule to allow them to attend meetings when planned. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not obligated to use the same advisor throughout. The parties are expected to inform the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to investigators if they change advisors at any time.

Witnesses are not permitted to have advisors in resolution process interviews or meetings.

7. Resolution Processes

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with College policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose. The College encourages parties to discuss this with their advisors before doing so.

a. Informal Resolution

Informal Resolution is used when the parties agree to resolve the matter through conflict resolution, when the responding party accepts responsibility for violating policy or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation. It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process.

i. Conflict Resolution

Conflict Resolution is an informal process, such as mediation or restorative practices, by which a mutually-agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate conduct and is encouraged as an alternative to the Formal Resolution process to resolve conflicts. The parties must consent to the use of Conflict Resolution.

Additionally, the Title IX Coordinator determines if Conflict Resolution is appropriate based on the willingness of the parties, the nature of the conduct at issue, and the amenableness of the conduct to Conflict Resolution. In a Conflict Resolution meeting, a trained administrator or third-party facilitates a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a Conflict Resolution process, though the parties may agree to appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the accord may result in appropriate responsive/disciplinary actions.

Conflict Resolution is not the primary resolution mechanism used to address reports of violent conduct of any kind or in other cases of serious violations of policy, though it may be made available after the Formal Process is completed, should the parties and the Title IX Coordinator believe that it could be beneficial. Conflict Resolution is not used as a stand-alone resolution in cases of sexual violence.

ii. Responding Party Admits Responsibility For Alleged Violations

The responding party may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the responding party admits responsibility for all alleged misconduct, the matter is referred to a Decision-maker (an individual selected from the Pool) who renders the determination that the responding party is in violation of College policy and determines appropriate sanctions and/or responsive actions in coordination with other appropriate administrator(s).

The appropriate sanction or responsive actions are promptly implemented in order to effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

If the responding party only admits to part of the alleged policy violations, then the Decision-maker finds the responding party in violation for the admitted violations, and the contested allegations will be resolved using Formal Resolution. Any applicable sanctions will be issued upon completion of the Formal

Resolution process.

iii. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College.

b. Formal Resolution: Step 1 – Investigation

Formal Resolution can be pursued for any conduct for which the responding party has not accepted responsibility that constitutes conduct covered by the Policy at any time during the process. Formal Resolution starts with a formal investigation.

Notice

If Formal Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the responding party upon commencement of the formal process. This facilitates the responding party's ability to prepare for the interview and to identify and choose an advisor to accompany them.

Notification will include a summary of the allegations including (if known) the identity of the parties involved, the precise misconduct being alleged, the date and location of the alleged incident(s), the specific policies implicated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

Updates on this notice may be made as the investigation progresses and more information is available.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent addresses of the parties as indicated in official College records, or emailed to the parties' College-issued email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence – if copied, an indication of that will be included on the correspondence to the responding party.

Resolution Timeline

The College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Appointment of Investigators

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints Pool members to conduct the investigation typically using a team of two investigators, usually within two (2) business days of determining that an investigation should proceed.

Ensuring Impartiality

The Title IX Coordinator will vet the assigned investigators to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

Investigation Timeline

Investigations are completed expeditiously, normally within ten (10) business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Delays in the Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include, but are not limited to, concurrent law enforcement activity, the need for language assistance, the absence of parties. The College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the College will implement interim actions as deemed appropriate.

College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

The investigators typically take the following steps, if not completed already (not necessarily in order):

- Determine the identity and contact information of the reporting party.
- In coordination with campus partners (e.g. the Title IX Coordinator), initiate or assist with any necessary interim actions or remedial measures.
- Identify all policies implicated by the alleged misconduct and notify the reporting and responding parties of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
 - If there is insufficient evidence to support reasonable cause, the inquiry is closed with no further action.
 - If there is sufficient evidence, the formal investigation begins.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the responding party.
- Meet with the reporting party to finalize their interview/statement, if necessary.
- Prepare the initial notice of investigation (NOI) on the basis of the preliminary inquiry. Notice of allegations may be combined with the NOI or provided subsequently. Notice should inform the parties of their right to have the assistance of an advisor of their choosing present for all meetings attended by the party.

- When formal notice of allegations is communicated, provide the parties with a written description of the alleged violation(s), including the parties involved, the date and location of the reported misconduct, a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- If and when additional/material alterations to allegations arise, communicate this promptly to the parties. This notice will provide the parties with a summary of the additions to/alterations of the allegations as well as any changes to the policies implicated.
- Provide the parties and witnesses an opportunity to review and verify the investigator's summary notes from their respective interviews and meetings.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose. Investigators and/or the Title IX Coordinator will provide advanced notice of such meetings, with rare exception.
- Interview all available relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the investigators to ask of the other party and witnesses.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, copies of which are to be included in an appendix to the report
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) a copy of the draft investigation report.
- Provide the parties with an equal opportunity to inspect and review the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a responsibility determination, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.
- Provide each party with a full and fair opportunity (no fewer than 10 days) to respond to the investigation report in writing.
- May choose to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- Incorporate relevant elements of the parties' written responses into the final investigation report, make any changes needed, and finalize the report. The final report is then shared with all parties.
- The responding party, if found in violation, is given an opportunity to accept the findings of the investigation and waive a hearing.
 - If the responding party accepts responsibility for all alleged misconduct and waives a hearing, the investigators will submit the final investigation report, complete with all relevant evidence; the parties' submitted responses; and any subsequent material, documentation, communication, etc.; to the Decision-maker, chosen from the Pool, who has had no prior involvement in the process.

- The Decision-maker will review all of the material, render a determination of responsibility, and determine appropriate sanctions in coordination with other relevant administrators, if applicable.
- If either party rejects the recommended findings, in whole or in part, the investigator(s) will refer any contested allegations for a hearing.
- The Title IX Coordinator will provide the Decision-maker with a copy of the final investigation report, complete with all relevant evidence, the parties' submitted responses, and any relevant subsequent materials, documentation, communications, etc.

Role and Participation of Witnesses

Witnesses (as distinguished from the parties) who are faculty, students, or staff of the College are expected to cooperate with and participate in the College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for both parties and all potential witnesses are ideal, circumstances (e.g. study abroad, summer break) may require individuals to be interviewed remotely. Skype™, Zoom™, FaceTime™, WebEx™, or similar technologies may be used for interviews if investigators determine that timeliness or efficiency dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, if deemed appropriate by the investigators, though not preferred.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

Evidentiary Considerations in the Investigation

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding of responsibility does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties or (3) the character of the parties.

Admission of Violation

The responding party may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the responding party admits responsibility for all of the alleged misconduct, the matter is directly referred to the Decision-maker, who will make a determination that the individual is in violation of College policy and determine appropriate sanctions and/or responsive actions. These sanction(s) and/or responsive actions are promptly implemented in order to effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the reporting party and the community.

Referral for Hearing

Provided that the contested allegations are not resolved through Informal Resolution, the Title IX Coordinator will refer the matter for a hearing within ten (10) days of the conclusion of the investigation, barring unusual circumstances.

b. Step 2: Decision-maker - process may divert directly to Decision-maker if all parties opt to waive the hearing. Process may also divert to either faculty and/or student conduct processes for a

hearing, if necessary.

The Title IX Coordinator will refer the investigation to a decision-maker from the pool who has not had previous involvement with the allegation. An alternate will sit in throughout the process if needed or at the discretion of the decision maker.

Those who have served as investigators will be witnesses in the hearing of the allegation and therefore may not serve as Decision-makers. Those who are serving as advisors for either party may not serve as Decision-makers in that matter. The hearing will convene at a time determined by the Decision-Maker.

Evidentiary Considerations

Any evidence that the Decision-maker believes is relevant and credible may be considered, including an individual's prior misconduct history, as well as evidence indicating a pattern of misconduct. When prior misconduct is related to the current allegations, the prior misconduct may be considered at the findings stage of the process; unrelated prior misconduct (e.g. alcohol abuse) will only be considered during sanctioning. The Decision-maker may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

While previous conduct violations by the responding party are not generally admissible as information supporting the current allegation, the investigator(s) may supply the Decision-maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the responding party may be considered in determining the appropriate sanction, because the College uses a progressive discipline system.

The Decision-maker renders a determination based on the preponderance of the evidence, i.e., whether it is more likely than not that the responding party violated policy.

If all parties opt to waive the hearing, the Title IX Coordinator will refer the matter to the Decision-maker.

i. Notice of Hearing

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

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Decision-Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing (See Section on "Advisors" above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during

the summer, as needed, to meet the resolution timeline followed by the College and remain within the sixty (60) day goal for resolution.

ii. Pre-Hearing

The Decision-Maker, after consultation with the parties as necessary, will provide the names of witnesses who will be participating in the hearing, all pertinent documentary evidence, and the investigation report between the parties at least ten (10) days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators unless all parties consent to the witness' participation in the hearing.

The parties will be given the name of the Decision-maker at least ten (10) days in advance of the hearing. All objections to any Decision-maker must be raised in writing and submitted to the Title IX Coordinator as soon as possible. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation.

Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

The Decision-maker, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. Otherwise, all parties will have the opportunity to present witnesses at the hearing, to present facts and arguments in full, and to question witnesses and party(ies) during the hearing. Procedures below describe the questioning mechanisms permitted.

Alternative Hearing Options

If a party or parties prefer not to attend the hearing in person, the parties should request alternative arrangements from the Decision-Maker at least two (2) days prior to the hearing. The Decision-Maker can arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

iii. Hearing Procedures

Hearings will usually be convened 10-14 days from the completion of the investigation and will be conducted in private. The Decision-maker has the authority to hear all allegations of discrimination, harassment, sexual misconduct and retaliation and may also hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, Discrimination and Sexual Misconduct.

Participants will include the Decision-maker, the investigator(s) who conducted the investigation, the reporting and responding parties (or three (3) organizational representatives when an organization is the responding party), advisors to the parties, and any called witnesses.

Investigator Presents the Report

The Decision-Maker explains the procedures and introduces the participants.

The investigator(s) will then present the report of the investigation and will be subject to questioning by

the parties and the Decision-maker. The investigator(s) will be present during the entire hearing process, but not during deliberations. The investigators' analysis and/or recommendation(s) are not admissible at the hearing. The investigators, advisors, and parties will refrain from discussion of the investigation's recommended findings, analysis, or credibility assessments. If such information is introduced, the Decision-Maker will disregard it. Once the investigator(s) present their report and are questioned, the parties may provide relevant information in turn and the Decision-maker will permit questioning of and by the parties and witnesses.

Participation in Hearing

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

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and the Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

Questioning

There are three options for questioning:

- The default is to permit full questioning of investigators, parties, and witnesses by the advisors to each party and the Decision-maker. If a party or witness does not submit to cross-examination at the hearing, the decision-maker must not rely on **any statement** of that party or witness in reaching a determination regarding responsibility.
- If all parties assent in advance, an alternative questioning approach can be approved by the Decision-Maker. The parties are able to submit written questions of the other party(ies), witnesses, and investigators to the Decision-maker. Questions may be submitted in advance of the hearing or during the hearing proceeding itself. The Decision-maker may also pose their own questions during the hearing. If this approach is selected, parties and/or advisors may not pose live questions directly.
- If all parties assent in advance, a third questioning option can be approved by the Decision-Maker permitting the parties to pose all questions to other parties, witnesses, and investigators directly.

The Decision-Maker has absolute discretion to determine which questions are relevant to the determination and may decline to pose or permit certain questions.

The rationale for all questions submitted in writing by the parties which are rejected and/or *not* posed by the Decision-maker will be explained in writing to the party who submitted the question(s) within two (2) days of the conclusion of the hearing proceeding.

The Decision-Maker may also direct that certain live questions, once posed, are not appropriate and should not be answered. The Decision-Maker is responsible for ensuring that neither abusive nor inappropriate questioning occurs.

The Decision-Maker may consult with legal counsel, when needed, to help to assess the appropriateness of specific questions. If any party or advisor is disrespectful of or disruptive to the proceedings, the Decision-Maker will take actions they deem appropriate to impose appropriate decorum.

Evidence Presented at the Hearing

Formal rules of evidence do not apply. Any evidence that the decision-maker believes is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The Decision-Maker is responsible for addressing any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence, and may disregard evidence lacking in credibility or that is improperly prejudicial. The Decision-Maker will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

Unless the Decision-Maker determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties (though there may be a limited exception with respect to pattern, the sexual history between the parties, or where evidence regarding the reporting party's sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct), if relevant, (3) or the character of the parties. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may supply the Decision-maker with information about previous findings to consider as possible evidence of pattern and/or predatory conduct.

There will be no observers in the hearing unless an exception is granted by the Decision-Maker. The Decision-Maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker or the parties involved, and then be excused.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each responding party to be conducted separately, if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each responding party.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Decision-makers, the parties, their advisors and appropriate administrative officers of the College will be allowed to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Deliberation and Decision-making

The Decision-maker will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The Decision-maker will base the determination(s) on a preponderance of the evidence (i.e. whether it is more likely than not that the responding party committed each alleged violation).

When there is a finding of responsibility on one or more of the allegations, the parties will then be invited to submit a statement to the Decision-maker for consideration in determining an appropriate sanction(s). The reporting party may submit a written statement describing the impact of the conduct and expressing a preference about the sanction(s) to be imposed. The Decision-maker may – at their discretion – consider the reporting party’s preference, but it is not binding.

The responding party may submit a written statement explaining any factors that they believe should mitigate or otherwise be considered in determining the sanction(s) imposed. The Decision-Maker will ensure that each of the parties has an opportunity to review any statement submitted by the other party(ies).

The Decision-maker will review the impact statements and will recommend the appropriate sanction(s). The Decision-maker, will then prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the finding, the information used in support of its recommendation, and any information the Decision-maker excluded from its consideration and why. The report should conclude with any sanctions. This report typically should not exceed three (3) pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

Using the deliberation report, the Title IX Coordinator will prepare a letter of outcome and will share the letter, including the final determination and applicable sanction(s), within three (3) days of receiving the Decision-maker’s deliberation report. The letter of outcome will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties’ College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

The letter of outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties, and witnesses, site visits, methods used to obtain evidence, and hearings held. The letter will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the reporting party designed to ensure access to the College’s educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law. The notification will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any appeals options that are available.

ii. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- The responding party's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the Decision-maker
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the reporting party and the community
- The impact on the parties

The sanctions will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by outside authorities.

Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- 1) **Warning:** An official written notice that the student has violated College policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the College.
- 2) **Restitution:** Compensation for damage caused to the College or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
- 3) **Fines:** Reasonable fines may be imposed. Fines are specified to include: \$100 for intentionally or negligently activating a fire alarm.
- 4) **Community/College Service Requirements:** For a student or organization to complete a specific supervised Community/College service.
- 5) **Loss of Privileges:** The student will be denied specified privileges for a designated period of time.
- 6) **Confiscation of Prohibited Property:** Items whose presence is in violation of College policy will be confiscated and will become the property of the College. Prohibited items may be returned to the owner at the discretion of the Dean of Students (or designee).
- 7) **Behavioral Requirement:** This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- 8) **Educational Program:** Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- 9) **Restriction of Visitation Privileges:** May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.

- 10) **College Housing Probation:** Official notice that, should further violations of Residence Life or College policies occur during a specified probationary period, the student may immediately be removed from College/housing. Regular probationary meetings may also be imposed.
- 11) **College Housing Reassignment:** Reassignment to another College housing facility. Residential Life personnel will decide on the reassignment details.
- 12) **College Housing Suspension:** Removal from College housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to College housing may be specified. Under this sanction, a student is required to vacate College housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Residence Life. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for College housing, the student must gain permission from the Director of Residence Life (or designee). This sanction may include restrictions on visitation to specified buildings or all Defiance housing during the suspension.
- 13) **College Housing Expulsion:** The student's privilege to live in, or visit, any College housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
- 14) **College Probation:** The student is put on official notice that, should further violations of College policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
- 15) **Eligibility Restriction:** The student is deemed "not in good standing" with the College for a specified period of time. Specific limitations or exceptions may be granted by the Dean of Students and terms of this conduct sanction may include, but are not limited to, the following:
 - a) Ineligibility to hold any office in any student organization recognized by the College or hold an elected or appointed office at the College; or
 - b) Ineligibility to represent the College to anyone outside the College community in any way including: participating in the study abroad program, attending conferences, or representing the College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
- 16) **College Suspension:** Separation from the College for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Dean of Students. During the suspension period, the student is banned from property, functions, events and activities without prior written approval from the Dean of Students. This sanction may be enforced with a trespass action as necessary.
- 17) **College Expulsion:** Permanent separation from the College. The student is banned from property and the student's presence at any College-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary.
- 18) **Withholding Diploma:** The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a complaint pending or as a sanction if the student is found responsible for an alleged violation.
- 19) **Revocation of Degree:** The College reserves the right to revoke a degree awarded from the College for fraud, misrepresentation, or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- 20) **Other Sanctions:** Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Dean of Students or designee.

The following sanctions may be imposed upon groups or organizations found to have violated the *Code of Student Conduct*:

- 1) One or more of the sanctions listed above and/or
- 2) Deactivation, de-recognition, loss of all privileges (including status as a College registered group/organization), for a specified period of time.

Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, sexual misconduct and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

d. Withdrawal or Resignation While Charges Pending

Students: The College does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination. Should a student decide to leave and/or not participate in the resolution process, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to College unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator and Director of Human Resources will reflect that status, and any College responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

e. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within 3 days of the delivery of the written letter of outcome to the parties. Any party may appeal the findings and/or sanctions, but appeals are limited to the below grounds.

A three-member appeals panel chosen from the Campus Judicial Committee Pool will be designated by the Title IX Coordinator. No appeal panelists will have been involved in the process previously.

Appeal Grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures).

- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the submitted appeal request.
- The sanctions imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the responding party.

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that one or more of the appeal grounds has been met, and the other party or parties may, but is not obligated, to show the grounds have not been met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) days of receiving a copy of the appeal, and/or bring their own appeal on separate grounds within the original appeal timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

When the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original Decision-maker merely because they disagree with its finding and/or sanctions.
- The Appeals Panel may consult with the Title IX Coordinator on questions of procedure or rationale for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original investigators and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the three-member appeals panel.
- Sanctions imposed as the result of the formal or informal resolution processes are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances pending the outcome of the appeal.
 - For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute extraordinary circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from the hearing of the appeal or remand. The letter of outcome for the appeal will be shared with the parties without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the

local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

- The letter of outcome for the appeal will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The letter will also include information that this is a final result.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases where a procedural [or substantive] error cannot be cured by the original Decision-maker (as in cases of bias), the appeals panel may recommend a new hearing with a new Decision-maker. The results of a remand to a Decision-maker cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

f. Long-Term Remedies/Actions

Following the conclusion of the resolution process and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment or discrimination, remedy its effects, and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing arrangements
- Permanent alteration of work arrangements for employees
- Provision of campus escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the College to the responding party.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College's ability to provide these services.

g. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All responding parties are expected to comply with the assigned sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by the sanctions/actions imposed by the date specified, whether by refusal, neglect, or any other reason, may

result in additional sanctions/ actions, including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

8. Records

In implementing this policy, records of all allegations, investigations, formal and informal resolutions, and hearings will be kept indefinitely by the Title IX Coordinator in the Title IX database. The College will also retain all materials used to train Title IX Coordinators, investigators, and decision-makers.

9. Statement of the Rights of the Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to College officials;
- The right to timely written notice of all alleged violations, including the identity of the parties involved, the precise misconduct being alleged, the date and location of the alleged misconduct, the implicated policies and procedures, and possible sanctions;
- The right to timely written notice of any material adjustments to the allegations (e.g. additional incidents or allegations, additional reporting parties, unsubstantiated allegations) and any attendant adjustments needed to clarify potential policy violations implicated.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible;
- The right to not have any personally identifiable information released to the public, without consent provided, except to the extent permitted by law;
- The right to be treated with respect by College officials;
- The right to have College policies and procedures followed without material deviation;
- The right to not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right to not be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by College law enforcement and/or other College officials;
- The right to be informed of available interim actions, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other student services, both on campus and in the community;

- The right to an College-implemented no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others;
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, need occur before this option is available. Such actions may include, but are not limited to:
 - Changing an on-campus student's housing to a different on-campus location
 - Assistance from College staff in completing the relocation
 - Changing an employee's work environment (e.g. reporting structure, office relocation)
 - Transportation accommodations
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and a pro-rated refund
 - Exam, paper, and/or assignment rescheduling or adjustment
 - Taking an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options
- The right to have the College maintain such actions for as long as necessary and for protective measures to remain private, provided privacy does not impair the College's ability to provide the accommodations or protective measures;
- The right to be fully informed of relevant College policies and procedures as well as the nature and extent of all alleged violations;
- The right to receive a detailed notice of investigation, once the College has decided to pursue a formal investigation, which contains the identity of the parties involved, the date and location of the alleged incident, the specific misconduct alleged, and the policies implicated by the alleged misconduct;
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible;
- The right to ask the investigator(s) and Decision-maker to identify and question relevant witnesses, including expert witnesses;
- The right to provide the investigator(s) or Decision-maker with a list of questions that, if deemed relevant and appropriate by the investigator(s) or Decision-maker, may be asked of any party or witness;
- The right to not have irrelevant prior sexual history or character admitted as evidence;

- The right to know the relevant evidence obtained, and to respond to that evidence on the record;
- A fair opportunity for the parties to provide the investigator(s) with their account and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least 10 days to review the report prior to the hearing;
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record;
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, where relevant;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to have reports of alleged Policy violations addressed by investigators, Title IX Coordinators, and Decision-makers who have received relevant annual training;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews, and/or hearings that are closed to the public;
- The right to petition that any College representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;
- The right to have an advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process;
- The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence;
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to submit an impact statement in writing to the Decision-maker following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed in a written notice of outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered without undue delay between the notifications to the parties;

- The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction that occur before the decision is finalized;
- The right to be informed of the opportunity to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College;
- The right to a fundamentally fair resolution as defined in these procedures.

10. Disabilities Accommodation in the Equity Resolution Process

The College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at the College. Anyone needing such accommodations or support should contact the Accessibility Services Coordinator or Human Resources if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

11. Records

In implementing these procedures, records of all allegations, investigations, and formal and informal resolutions will be kept by the Title IX Coordinator indefinitely in the Title IX Coordinator Database. The College will also retain all materials used to train Title IX Coordinators, investigations, and decision-makers.

12. Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. These policies and procedures supercede any previous policy(ies) addressing harassment, sexual misconduct, and discrimination and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students and employees are encouraged to check online <http://www.defiance.edu/student-life/info/campus-safety-and-compliance.html> for the updated versions of all policies and procedures.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the College web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally. **This policy and procedure was implemented on July 31, 2019.**

12. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the responding party, and is protected from release under a federal law, FERPA. However, the college observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and intimate partner violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party.
- The college may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a college policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the college will not release any information that could lead to the identification of the reporting party.

13. Education and Programs

The College provides education to members of the community. All new students complete an online training module as well as a small group training session during Welcome Week which addresses the issues of sex discrimination, bystander intervention and behaviors that may be associated with violations of College policy such as alcohol and drug use. Incoming students are required to prove they have completed the online training or a registration hold will be placed on their account. New employees, including student employees, must complete a training session as part of their employment process. Additional programming, including the important of bystander intervention, is offered to students, faculty and staff, including passive and active programs.

The Title IX team and investigators receive yearly training focused on adjudicating cases of sex discrimination. First responders, Residence Life, Student Life and Security Staff receive regular, ongoing training focused on working with reporting parties of sex discrimination.

The Campus Sex Crimes Prevention Act requires colleges to issue a statement advising the campus community on how to find law enforcement agency information, which is provided by a state, concerning registered sex offenders. Members of the Defiance College community are encouraged to access the website of the Ohio Attorney General’s Office (website included below) where they can search the sex offender registry for any Ohio county.

<http://www.ohioattorneygeneral.gov/>

Victim Support Information

There are a number of campus resources available for students who have been a victim of sexual misconduct as identified in this policy. The Counseling Center provides free and confidential consultation, assessment, individual, group, couple's and family therapy to Defiance College students. The service that will best fit each student's need will be determined after an initial meeting with a therapist. Counseling Center staff are available “on call” to assist victim’s at any hour of the day in crisis response.

In the residence halls, Hall Directors and Resident Assistants (RAs) receive annual training to provide support and referral for victims of sexual misconduct as identified in this policy. Students may contact the Residence Life Duty phone for assistance 24 hours all day at 419-439-0359.

In the community, Defiance County Victim Assistance, under the direction of the Defiance County Prosecuting Attorney, provides support, information, and advocacy for any victim of crime in Defiance County, including victims of sexual misconduct as identified in this policy. All services are free of charge, confidential and provided only at the victim's request. From the moment a crime occurs, Victim Advocates are available to help in various ways. Two full-time advocates are available 24 hours a day, seven days a week. The Victim Assistance program also coordinates the activities of Sarah's House, a regional support center for victims of crime and their families. The professional staff at Sarah's House provide referrals to other appropriate social service agencies as needed. Defiance County Victim Assistance can be reached by phone at (419) 782-0911. Sarah's House is located at 1114 E. 2nd Street in downtown Defiance.

Access to Policy

The Policy is published online on the Defiance College Website <http://www.defiance.edu/information/titleix.html>. It is included in the Student Handbook distributed yearly to students.

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APPENDIX A

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor "NO" clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

APPENDIX B

Members of Investigator and Decision-Maker Pool

Jake Arnold
Mary Burkholder
Mercedes Clay
Jack Lawson
Jennifer Walton
Kathleen Westfall
Bridgette Winslow