Defiance College
Nondiscrimination Policy

Defiance College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Defiance College does 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 grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above is in violation of the Defiance College policy on nondiscrimination.

The College will promptly and effectively address any such Discrimination of which it has Notice using the applicable resolution process in the Procedures.

Nondiscrimination Coordinator:
Lisa Marsalek, Vice President and Dean of Student Affairs
128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512
(419) 783-2587 or lmarsalek@defiance.edu

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DEFIANCE COLLEGE DISCRIMINATION, HARASSMENT, AND OTHER PROHIBITED CONDUCT POLICY FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES (Hereinafter, "the Policy")

1. Purpose

Defiance College is committed to providing an educational and employment environment that is free from Discrimination based on Protected Characteristics, Harassment, and Retaliation for engaging in protected activity.

The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness in all aspects of the education program or activity, the College has developed policies and procedures that provide a prompt, fair, and impartial resolution of allegations of Protected Characteristic Discrimination, Harassment, or Retaliation.

2. Scope

The Policy applies to all Employees, Students, and other individuals participating in or attempting to participate in the College's Education Program or Activities, including education and employment.

The Policy prohibits all forms of Discrimination on the basis of the Protected Characteristic(s), and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with the Policy.

3. Notice of Nondiscrimination

Defiance College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Defiance College does 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 grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above is in violation of the Defiance College policy on nondiscrimination.

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The College will promptly and effectively address any such Discrimination of which it has Notice using the applicable resolution process in the Procedures.

4. Nondiscrimination Team Contacts

The Vice President for Student Affairs serves as the Nondiscrimination Coordinator to coordinate the College's compliance with federal, state, and local civil rights laws and ordinances and the Defiance College's policy on harassment, discrimination and other prohibited conduct.

For All Discrimination and Harassment allegations including Sex Discrimination and Sexual Harassment allegations, disability-based allegations, and for Discrimination and Harassement allegations not based on Sex or disability:

Nondiscrimination Coordinator
Lisa Marsalek
Vice President and Dean of Student Affairs
Office of Student Life
128 Hubbard Hall
701 N Clinton St Defiance OH 43512
(419)-783-2587
lmarsalek@defiance.edu

Trained Deputy Coordinators who can also offer assistance are available in the following offices:
For Employees:
Mary Burkholder, Director of Human Resources
106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512
(419) 783-2360 or mburkholder@defiance.edu

For Students:
Matthew Gehring, Assistant Athletic Director for Compliance, Facilities, and Internships
105H McMaster Center, 701 N. Clinton St., Defiance, OH 43152
(419) 783-2378 or mgehring@defiance.edu

Jennifer Walton, Associate Dean for Student Belongingness and Director of Residence Life
132 Hubbard Hall, 701 N. Clinton St, Defiance., OH 43512
(419) 783-2563 or jwalton@defiance.edu

Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating the College's timely, thorough, and fair response; investigation and resolution of all alleged prohibited conduct under the Policy; and monitoring the effectiveness of, and any barriers to, accessing the Policy and related procedures to ensure an education and employment environment free from Discrimination, Harassment, and Retaliation.

The College has determined that the following administrators are Officials with Authority (OWAs) to address and correct Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct. In

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addition to the Nondiscrimination Team members listed above, these OWAs may also accept Notice or Formal Complaints on behalf of the College.

Tiffani Selhorst, Athletic Director
105 McMaster Center, 701 N. Clinton St., Defiance, OH 43512
(419) 783-2380 or tselhorst@defiance.edu

The College recognizes that allegations under the Policy may include multiple forms of Discrimination, Harassment, and Retaliation as well as violations of other College policies; may involve various combinations of Students, Employees, and other members of the College community; and may require the simultaneous attention of multiple College departments. Accordingly, all College departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to alleged Discrimination, Harassment, or Retaliation.

Defiance College has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

5. External Contact Information

Concerns about the College's application of the Policy and compliance with certain federal civil rights laws may be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

Denver Office
Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov

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Fair Housing and Equal Opportunity (FHEO)
U.S. Department of Housing and Urban Development
Chicago Regional Office of FHEO
U.S. Department of Housing and Urban Development
Ralph H. Metcalfe Federal Building
77 W. Jackson Boulevard Suite 2202
Chicago, IL 60604
(312) 913-8453
(800) 765-9372
Email: complaints_office_05@hud.gov

For allegations of Employee-on-Employee misconduct, contact the Equal Employment Opportunity Commission (EEOC).

EEOC Regional Office
Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Suite 3001
Cleveland, OH, 44199
Phone: 216-306-1120; Fax 216-522-7395

6. Mandated Reporting and Confidential Resources

All College Faculty and Employees (including Student-Employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected Discrimination, Harassment, Sexual Misconduct, Retaliation, and/or Other Prohibited Conduct to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal College action, if appropriate.

Complainants, especially those who wish to remain anonymous, may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Nondiscrimination Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these Employees will immediately pass reports to the Nondiscrimination Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the available reporting options for a Complainant or third party (including parents/guardians when appropriate):

A. Confidential Resources

To enable Complainants to access support and resources without filing a Formal Complaint, the College has designated specific Employees as Confidential Resources. Those designated by the College as Confidential Resources are not required to report actual or suspected Discrimination, Harassment, Retaliation, or Other Prohibited Conduct in a way that identifies the Parties. They

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will, however, offer options and resources without any obligation to inform an outside agency or College official unless a Complainant has requested the information be shared.

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

- Director of Counseling & Accessibility Services, Kris Knight: 419-783-2548
- Accessibility Services Coordinator and Case Manager, Nikki Arnold: 419-783-2445
- To access a SANE (Sexual Assault Nurse Examiner) after normal business hours, contact Kris Knight, confidential Victim's Advocate: 419-783-2562
- Four County SART Program: 1-800-782-8555
- Ohio Sexual Violence Helpline: 1-888-OHIO-HELP
- Off-campus (non-employees):
    - Licensed professional counselors and other medical providers
    - Local rape crisis counselors
    - Domestic violence resources
    - Local or state assistance agencies
    - Clergy/Chaplains
    - Attorneys

Institutional counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles, will timely submit anonymous statistical information for Clery Act purposes and make de-identified reports of incidents so that the Administrator can evaluate for a potential hostile environment, unless they believe it would be harmful to their client.

Failure of a Mandated Reporter, as described above, to report an incident of Discrimination, Harassment, Sexual Misconduct, Retaliation, or Other Prohibited Conduct of which they become aware is in violation of College policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations in which a Respondent is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under the Policy.

A Mandated Reporter who is themselves a target of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct under the Policy is not required to report their own experience, though they are encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with the College without concern that Policy will require them to disclose information to the institution without permission. Such individuals include:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic Violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

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7. Disability-Based Complaints

Defiance College is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state and local laws and regulations 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 of whether they currently have a disability. 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 Nondiscrimination Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Complaints related to disability status and/or provision of accommodations are addressed using the procedures in the Harassment, Discrimination and Other Prohibited Conduct policy. Similarly, allegations of Discrimination or Harassment on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under the procedures below.

For details relating to disability accommodations in the College's resolution process, see Section 23.

8. Jurisdiction

The Policy applies to the College's Education Program and Activities, to conduct that takes place on property owned or controlled by the College, at College-sponsored events, and in any building owned or controlled by a College-recognized student organization.[1]

The Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to College's Education Program or Activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial College interest.

A substantial College interest includes:

1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any federal, state, or local law.

[1] Education Program and Activity includes the College Employees' work environment.

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2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any Student, Employee, or other individual.
3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
4) Any situation that substantially interferes with the College's educational interests or mission.

For disciplinary action to be issued for Title IX Sexual Harassment under the Policy, the Respondent must be a College Student or Employee at the time of the Formal Complaint. For allegations other than Title IX Sexual Harassment, the College may issue disciplinary action under the Policy if the Respondent was a College Student, or Employee at the time of the alleged misconduct. If the Respondent is unknown or is not a member of the College community, the Nondiscrimination Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

When a party is participating in a College Credit Plus (CCP) program, the College will coordinate with the party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the Notice under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the Nondiscrimination Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Nondiscrimination Coordinator may be able to assist and support a Student or Employee Complainant who experiences Discrimination in an externship, study abroad program, or other environment external to the College where Sexual Harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a Student or Employee's education or employment environment, those effects can often be addressed remedially by the Nondiscrimination Coordinator if brought to their attention.

9. Supportive Measures

The College will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the College's Education Program or Activity, including measures designed to protect the safety of all Parties and/or the College's educational environment and/or to deter Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

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The Nondiscrimination Coordinator promptly makes supportive measures available to the Parties upon receiving Notice or a Formal Complaint. At the time that supportive measures are offered, if a Formal Complaint has not been filed, the College will inform the Complainant, in writing, that they may file a Formal Complaint with the College either at that time or in the future. The Nondiscrimination Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

Supportive measures may be available upon Notice even if the reported behavior may be protected free expression, occurred outside of the Recipient's jurisdiction, or for any other reason is not subject to the Recipient's grievance procedures. Supportive measures may be available to other Students or Employees who are not the Complainant, depending on the nature of the allegations and their impact.

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

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate Student or Employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing resolution process under the Policy.

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10. Online Harassment and Misconduct

College policies are written and interpreted broadly to include online manifestations of any of the prohibited behaviors below, when those behaviors occur in or have an effect on the College's Education Program or Activities or when they involve the use of College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or Sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

11. Inclusion Related to Gender Identity/Expression

The College strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, and gender-diverse Students and Employees.

The College does not tolerate Discrimination and Harassment on the basis of gender identity or expression. If a member of the College community believes they have been subjected to Discrimination or Harassment under the Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, the College supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

The College is committed to fostering a climate where all identities are valued, contributing to a more vibrant and welcoming community. The College will administratively address issues some Students and Employees, including those identifying as intersex, nonbinary, transgender, agender, two-spirit, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the College's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the College's goal of being as welcoming a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with an apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

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Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender diverse, their cisgender identity may be something that is in their past — dead, buried, and behind them. To then revive their deadname could trigger stressors, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Unintentional deadnaming can be addressed by an apology and an effort to use the person's name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

The College uses a number of interventions to address concerns that are raised related to gender-based Discrimination or Harassment, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the rights of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, the College will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, the College will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

12. Prohibited Conduct

Students and Employees are entitled to an education and employment environment that is free of Discrimination, Harassment, and Retaliation. The 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 Discrimination, Harassment, and Retaliation that are also prohibited under College policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of College policy, though supportive measures will be offered to those impacted, and the College will implement remedies addressing the larger community, as appropriate.

All offense definitions encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity between incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, behavior similarity, or other factors. Where a pattern is found, it can be the basis to enhance sanctions accordingly.

Violation of any other College policies may constitute Discrimination or Harassment when motivated by actual or perceived Protected Characteristic(s), and the result is a limitation or denial of Education or Employment access, benefits, or opportunities.

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A. Discrimination

Discrimination is different treatment with respect to a person's employment or participation in an Education Program or Activity based, in whole or in part, upon the person's actual or perceived Protected Characteristic(s). Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived Protected Characteristic and that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a College program or activity.

B. Discriminatory Harassment

- Unwelcome conduct on the basis of actual or perceived Protected Characteristic(s),
- which,based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the College's program or activity

C. 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, a specific form of Discriminatory Harassment, as an unlawful discriminatory practice.

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

The College has adopted the following definitions of Sexual Harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

1) **Title VII/FHA Sexual Harassment** applies to situations where an Employee is subjected to workplace Sexual Harassment or where a situation involves a residential Complainant in College-provided housing.
   - Unwelcome verbal, written, graphic, and/or physical conduct;
   - that is severe or pervasive and objectively offensive;
   - on the basis of Sex, that

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- unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

2) **Title IX Sexual Harassment**, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Nondiscrimination Coordinator. Sexual Harassment includes:

Conduct on the basis of Sex, or that is sexual in nature, that satisfies one or more of the following:

1) **Quid Pro Quo:**
   - An Employee of the College,
   - conditions[2] the provision of an aid, benefit, or service of the College,
   - on an individual's participation in unwelcome sexual conduct.

2) **Sexual Harassment (Hostile Environment):**
   - Unwelcome conduct,
   - determined by a Reasonable Person,
   - to be so severe, and
   - pervasive, and,
   - objectively offensive,
   - that it effectively denies a Complainant equal access to the College's program or activity.[3]

3) **Sexual Assault**:
   a. **Rape:**
      - Penetration, no matter how slight,
      - of the vagina or anus of a person,
      - with any body part or object, OR
      - Oral penetration
        - of a sex organ of the Complainant, or
        - by the Respondent's sex organ,or
        - By a sex-related object
      - without the consent of the Complainant,

[2] Implicitly or explicitly.

[3] Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent), though a Decision-maker may consider compelling evidence that rebuts an assertion of unwelcomeness. Severity, pervasiveness, 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 ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

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- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

b. **Fondling (actual or attempted):**
○The touching of the private body parts (genitals, buttocks, groin, breasts) of the Complainant by the Respondent, or
○ the Respondent's private body parts touching the Complainant, or
○ the Respondent causing the Complainant to touch the Respondent's or their own private body parts,

- for the purpose of sexual gratification,[4]
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

c. **Incest:**
- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Ohio law.

d. **Statutory Rape**:
- Sexual intercourse,
- with a person who is under the statutory age of consent of 16 years old.

4) **Dating Violence:**
- Violence,[5]

[4] Contact with private body parts is considered to be done for the purpose of sexual gratification unless: (1) the contact can be proven inadvertent; (2) the contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider; (3) the contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual); (4) the contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual; or (5) The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s).

[5] For purposes of the Policy, violence includes situations where the Respondent intentionally or recklessly causes the Complainant serious physical, emotional, or psychological harm.
(1) Intent is evidenced when a Reasonable Person would be more likely to act with the purpose of causing serious harm rather than for any other reason.
(2) Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant.
(3) Legitimate use of violence for self-defense is not chargeable under the Policy because the purpose is safety, not harm. It may also be used as a defense if it is not clear at the time of charging whether the use of violence was for self-defense or not. Self-defense is only to be considered if it is prompted by physical violence or the threat thereof.
(4) Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.
(5) Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm.

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- on the basis of Sex,
- committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
        - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
        - Dating Violence does not include acts covered under the definition of Domestic Violence

5) Domestic Violence:[6]

- Violence,[7]
- on the basis of Sex,
- committed by a Respondent who is a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Ohio, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Ohio.

6) Stalking:

- A Respondent engaging in a course of conduct,
- on the basis of Sex,
- directed at the Complainant, that
    - would cause a Reasonable Person to fear for the person's safety, or the safety of others; or
    - Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property

[6] To categorize an incident as Domestic Violence under the Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

[7] As defined in the footnote for Dating Violence.

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- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

D. Sexual Misconduct

1) **Sexual Exploitation:**
   - Any person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above,
   - for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Distributing (e.g., Airdropping, Snapchatting, displaying on a device for others to see) Authentic or Synthetic Non-Consensual Intimate Imagery (NCII)[89]
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person 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 non-consensual pornography
- Prostituting another person
- 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 virus, disease, or infection

[8] Authentic Non-Consensual Intimate Imagery includes authentic (i.e., real) sexually explicit, nude, or intimate videos, photos, or audio recordings of an individual distributed without the consent of the individual depicted.

[9] Synthetic Non-Consensual Intimate Imagery includes videos, photos, or audio representations of an individual that have been digitally manipulated (i.e., faked) to depict an individual in a sexually explicit, nude, or intimate manner or saying sexual or explicit words/statements and distributed without the consent of the individual depicted. Synthetic NCII depicts sexually related actions or behaviors that never happened, or places identifiable individuals in pornographic, nude, or sexual situations without their consent.

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- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in Sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

E. Other Prohibited Conduct (when motivated by the Complainant's protected characteristic(s)/status)

1) **Bullying and /Cyberbullying:** defined as 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.
2) **Harm to Persons:** intentional or recklessly causing physical harm or endangering the health or safety of any person;
3) **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;
4) I**ntimidation:** defined as implied threats or acts that cause an unreasonable fear of harm in another;
5) **Hazing:** Intentionally, knowingly, or recklessly, for the purposes of initiating, admitting or affiliating a student into or with an organization, or for the purpose of continuing or enhancing a student's membership or status in an organization, causing, coercing or forcing a student to do any of the following, regardless of whether such conduct occurs on or off campus:
   - Violate Federal or State criminal law.
   - Consume any food, liquid, alcoholic liquid, drug or other substance which subjects the student to a risk of emotional or physical harm.
   - Endure brutality of a physical nature, including whipping, beating, branding, calisthenics or exposure to the elements.

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- Endure brutality of a mental nature, including actively adversely affecting the mental health or dignity of the individual, sleep deprivation, exclusion from social contact or conduct that could result in extreme embarrassment.
- Endure brutality of a sexual nature.
- Endure any other activity that creates a reasonable likelihood of bodily injury to the student.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of Hazing to be upheld
- It shall not constitute an excuse or defense to a Hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained
- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered Hazing

6) Retaliation

- The College or any member of the College community,
- taking or attempting to take materially adverse action,
- by intimidating, threatening, coercing, harassing, or discriminating against any individual,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy and associated procedures.

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

7) Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of the Nondiscrimination Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in the Policy
- Intentional interference with a resolution process, including, but not limited to:

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- Destroying or concealing evidence
- Seeking or encouraging false testimony or providing false testimony or evidence
- Intimidating or bribing a witness or party

F. Sanction Ranges

The following sanction ranges apply to Prohibited Conduct under the Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative disciplinary record.

- **Discrimination:** reprimand/warning through expulsion or termination
- **Discriminatory Harassment:** reprimand/warning through expulsion or termination
- **Title VII/FHA Sexual Harassment:** reprimand/warning through expulsion or termination
- **Quid Pro Quo Harassment:** reprimand/warning through expulsion or termination
- **Sexual Harassment (Hostile Environment):** reprimand/warning through expulsion or termination
- **Rape:** suspension through expulsion or termination
- **Fondling:** reprimand/warning through suspension (termination for Employees).
- **Incest:** reprimand/warning through restrictions/probation
- **Statutory Rape:** reprimand/warning through suspension (termination for Employees)
- **Stalking:** restrictions/probation through expulsion or termination.
- **Dating/Domestic Violence:** restrictions/probation through expulsion or termination
- **Sexual Exploitation:** reprimand/warning through expulsion or termination.
- **Bullying:** reprimand/warning through expulsion or termination
- **Threat:**reprimand/warning through expulsion or termination
- **Intimidation:**reprimand/warning through expulsion or termination
- **Hazing:** reprimand/warning through expulsion or termination
- **Retaliation:** reprimand/warning through expulsion or termination
- **Failure to Comply/Process Interference:** reprimand/warning through expulsion or termination

G. Consent, Force, and Incapacitation

As used in the Policy, the following definitions and understandings apply:

1) Consent:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.[10]

[10] Ohio does not have a specific definition of consent. See Section 2907 of the Ohio Revised code for descriptions of sex offenses which are applicable to criminal prosecutions for sex offenses in Ohio but may differ from the definition used by the College to address Policy violations.

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Individuals may perceive and experience the same interaction in different ways. Therefore, 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 activity. Consent is evaluated from the perspective of what a Reasonable Person would conclude are mutually understandable words or actions. Reasonable reciprocation can be implied consent. 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 reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Although resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of Sexual Assault.

Proof of consent or non-consent is not a burden placed on any party involved in a Formal Complaint. 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 misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sexual activity, those acts may constitute Dating Violence or Sexual Assault.[11]

[11] Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) 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.

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2) Force and Coercion:

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in 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. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) Incapacitation:

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person 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, and how" of their sexual interaction).

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including as a result of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of the Policy. "Should have known" is an objective, Reasonable Person standard that assumes that a Reasonable Person is both sober and exercising sound judgment.

H. 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

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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.

I. Relationships Between Students and Employees (See Appendix G)

13. Standard of Evidence

The College uses the preponderance of the evidence standard of evidence when determining whether a Policy violation occurred. This means that the College will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated the Policy.

14. Notice/Complaints of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct

A report provides the College Notice of an allegation or concern about Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct and provides an opportunity for the Nondiscrimination Coordinator to provide information, resources, and supportive measures. A Formal Complaint informs the College that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Formal Complaint. An individual other than a Complainant may make a report of Discrimination or Harassment on behalf of another person or group; however, that individual does not become the Complainant. Reports or Formal Complaints of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct may be made using any of the following options:

1) File a report or Formal Complaint with, or give verbal Notice to, the Nondiscrimination Coordinator or to any member of the Nondiscrimination Team. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office of the Nondiscrimination Coordinator or any other Nondiscrimination Team member listed in the Policy.

2) Report online at https://www.defiance.edu/incident-report-form/

As used in the Policy, the term "Formal Complaint" means a document or electronic submission (such as by electronic mail or through an online portal provided by the College for this purpose) that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. If Notice is submitted in a format that does not meet this standard, the Nondiscrimination Coordinator will contact the Complainant to determine whether the Complainant is requesting that the College initiate an investigation or other appropriate resolution procedures.[12]

[12] As required by federal law, the College may not initiate a grievance process for allegations of Title IX Sexual Harassment without a Formal Complaint. For all other allegations of prohibited conduct under the Policy, a Formal Complaint is not required, and the College may initiate its grievance process upon Notice of the alleged misconduct. Notice can be substituted in place of references to a Formal Complaint for allegations other than Title IX Sexual Harassment throughout the Policy.

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Reporting carries no obligation to file a Formal Complaint, and in most situations, the College is able to respect a Complainant's request to not initiate an investigation or other appropriate resolution procedures. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the College may need to initiate an investigation or other appropriate resolution procedures. If a Complainant does not wish to file a Formal Complaint, the College will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of privacy by submitting a report that allows the College to discuss and/or provide supportive measures, in most circumstances.

15. Time Limits on Reporting

There is no time limitation on providing Notice/Formal Complaints to the Nondiscrimination Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Nondiscrimination Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

In extraordinary circumstances, the Nondiscrimination Coordinator may exercise their sole discretion to allow a non-participatory Complainant to refile the same complaint after a Resolution has been reached. The Nondiscrimination Coordinator will assess whether (1) the Complainant's failure to participate or fully participate deprived the process of critical information that would have been available had the Complainant fully participated; and (2) there is evidence that the Complainant's non-participation was a result of coercion, intimidation, threats, or undue pressure directly related to their participation. In all situations where refiling is desired, the Complainant should make a written request to the Administrator to refile, which the Nondiscrimination Coordinator may grant or deny. The Nondiscrimination Coordinator's decision is not subject to appeal.

16. False Allegations and Evidence

Deliberately false and/or malicious accusations under the Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination. False allegations may be a form of Harassment or Retaliation or may fall within other College policies.

Witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation, hearing, or Informal Resolution can be subject to discipline under appropriate College policies.

17. Confidentiality/Privacy

The College makes every effort to preserve the Parties' privacy. The College will not share the identity of any individual who has made a report of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct; any Complainant; any individual who has been reported to be the perpetrator of

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Discrimination, Harassment, Retaliation, or Other Prohibited Conduct; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation or resolution proceeding arising under these policies and procedures.[13,14]

Further, Parties and Advisors are expected to maintain the confidentiality of all information created by or shared with them by the College during any investigation and/or resolution process. Parties are entitled to share their own accounts and experiences but are encouraged to consider the sensitivity of the matter if they do so and should consult with their Advisors on any potential implications of doing so.

Additional information regarding confidentiality and privacy can be found in Appendix F.

18. Emergency Removal/Interim Actions/Leaves

The College can act to remove a Student Respondent accused of Title IX Sexual Harassment from its Education Program or Activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any Student or other individual justifies removal. This risk analysis is performed by the Nondiscrimination Coordinator and may be done in conjunction with the CARE team using its standard objective violence risk assessment procedures. Students accused of other forms of Discrimination, Harassment, or Other Prohibited Conduct (not Sex-based) are subject to interim suspension, which can be imposed for safety reasons.

Employees are subject to existing procedures for interim actions and leaves.

19. Federal Timely Warning Obligations

The College must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the College community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions considering the potential danger.

20. Amnesty

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report alleged misconduct to College officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

[13] 20 U.S.C. 1232g.
[14] 34 C.F.R. § 99.

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It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, the College offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

A. Students

Defiance College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

B. Employees

Sometimes, Employees are hesitant to report Discrimination, Harassment, Retaliation, or Other Prohibited Conduct they have experienced for fear that they may get in trouble themselves. The College may, at its discretion, offer Employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

21. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The College will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

1) Sexual Assault

- Seek forensic medical assistance at the nearest hospital or by calling 419-783-2562 to access a SANE nurse, ideally within 120 hours of the incident (sooner is better)
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container (if provided by law enforcement)
- Seeking medical treatment can be essential even if it is not for the purpose of collecting forensic evidence

2) Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if a party or witness changes their phone number
    - Make a secondary recording of any voice messages and/or save the audio files to a cloud server
    - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook)

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- Save copies of e-mail and social media correspondence, including notifications related to account access alerts
- Take time-stamped photographs of any physical evidence including notes, gifts, etc. in place when possible
- Save copies of any messages, to include those showing any request for no further contact
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible
- If changing devices, make sure to transfer any files needed to the new device

During the initial meeting between the Complainant and the Nondiscrimination Coordinator, the importance of taking these actions will be discussed, if timely.

22. Federal Statistical Reporting Obligations

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

1) All "primary crimes," which include criminal homicide, Sexual Assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
2) 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
3) Violence Against Women Act (VAWA-based crimes), which include Sexual Assault, Domestic Violence, Dating Violence, and Stalking[15]
4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on or off campus or in the surrounding area, but no addresses are given) must be shared with the Clery Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include: cabinet members, 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.

23. Independence and Conflict of Interest

The Nondiscrimination Coordinator manages the Nondiscrimination Team and acts with independence and authority, free from bias and conflicts of interest. The Nondiscrimination Coordinator oversees all Resolutions under the Policy and associated procedures. The members of the Resolution Process Pool are vetted and trained to ensure they are not biased for or against any party in a specific Formal Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or Discrimination by the Nondiscrimination Coordinator, contact the President of the College at 419-783-2300. Concerns of bias,

[15] 42 U.S.C. sections 13701 through 14040.

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misconduct, Discrimination, or a potential conflict of interest by any other Nondiscrimination Team member should be raised with the Nondiscrimination Coordinator.

24. Policy Revision

The Policy and associated procedures supersede all previous policies addressing Discrimination, Harassment, sexual misconduct, and/or Retaliation, for incidents occurring on or after August 14, 2020. The Nondiscrimination Coordinator regularly reviews and updates the Policy and procedures. Incidents occurring before August 14, 2020, will be addressed using the policy that was in place at the time of the incident, but the procedures used will be those in place at the time of the Formal Complaint. The College reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online.

If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the College reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The College will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

The Policy is effective July 15, 2026.

APPENDIX A: PROCEDURAL DEFINITIONS[16]

The following definitions apply to the Discrimination, Harassment and Other Prohibited Conduct Policies and Procedures:

- ***Actual Knowledge.*** Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any official who has the authority to institute corrective measures on behalf of the institution
- ***Advisor*.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to a resolution process, advise the party on that process, and conduct questioning for the party at the hearing, if any.

[16] Defined terms are considered “terms of art” and are capitalized throughout this document.

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- ***Appeal Decision-maker*.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- ***Complainant*.** An individual who has allegedly been subjected to conduct that could constitute Discrimination, Harassment, Retaliation, or Other Prohibited Conduct under the Policy.
- ***Confidential Resource*.** An Employee who is not a Mandated Reporter of Notice of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct under the Policy (irrespective of Clery Act Campus Security Authority status).
- ***Day*.** A business day when the College is in normal operation. All references to days in the Policy refer to business days unless specifically noted.
- ***Decision-maker*.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether the alleged conduct has violated the Policy and/or assigns sanctions.
- ***Directly Related Evidence*.** Evidence connected to the allegations, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and which cannot be relied upon by the Decision-maker. Compare to Relevant Evidence below.
- ***Education Program or Activity*.** Locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct occurs. Also includes any building owned or controlled by a student organization that the College officially recognizes.
- ***Employee.*** A person, including Faculty, employed by the College, either full- or part-time, including Student-Employees when acting within the scope of their employment.
- ***Faculty.*** Any member of the College community who is responsible for academic activities, teaching, research, or the academic evaluation of Students.
- ***Final Determination*.** A conclusion by the standard of evidence that the alleged conduct did or did not violate the Policy.
- ***Finding*.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- ***Formal Complaint***. A document submitted or signed by a Complainant or signed by the Nondiscrimination Coordinator alleging a Respondent engaged in Discrimination, Harassment, Retaliation, and/or Prohibited Conduct under the Policy and requesting that the College investigate the allegation(s).
- ***Formal Grievance Process*.** "Process A," the College's method of formal resolution to address Title IX Sexual Harassment allegations, which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act amendments to the Clery Act (34 C.F.R. § 668). See Appendix D for information on the Administrative Resolution Process ("Process B") the College may use to resolve complaints in certain situations.

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- ***Informal Resolution*.** A Resolution the Parties agree to and the Nondiscrimination Coordinator approves, which occurs prior to a Final Determination.
- ***Investigation Report*.** The Investigator's written summary of all Relevant Evidence gathered during the investigation. Versions include the Draft Investigation Report and the Final Investigation Report.
- ***Investigator*.** The person(s) the College authorizes to gather facts about an alleged violation of the Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report of Relevant Evidence and a file of Directly Related Evidence.
- ***Mandated Reporter*.** A College Employee who is obligated by Policy to share knowledge, Notice, and/or reports of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct with the Nondiscrimination Coordinator.[17]
- ***Nondiscrimination Coordinator*.** The person with primary responsibility for overseeing and enforcing the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy and Procedures. As used throughout the Policy and procedures, the "Nondiscrimination Coordinator" also includes their designee(s).
- ***Nondiscrimination Team*.** The Nondiscrimination Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.
- ***Notice*.** When an Employee, Student, or third party informs the Nondiscrimination Coordinator or other Official with Authority of the alleged occurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.
- ***Official with Authority (OWA)*.** A College Employee who has responsibility to implement responsive measures for Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the College's behalf. College OWAs.
- ***Parties*.** The collective term for the Complainant(s) and Respondent(s) involved in a complaint.
- ***Pattern*.** Allegations or evidence that one person has engaged in two or more substantially similar actions toward one or more targets, wherein the proof of one action is likely to increase the proof/likelihood of the other(s).
- ***Pregnancy or Related Conditions.*** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- ***Process A***. The Formal Grievance Process detailed in the procedures and defined Appendix C .
- ***Process B*.** The Administrative Resolution Process detailed in Appendix D that only applies when Process A does not, as determined by the Nondiscrimination Coordinator.
- ***Protected Characteristics*.** Any characteristic for which a person is afforded protection against Discrimination and Harassment by law or College policy.

[17] Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under the Policy.

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- ***Reasonable Person*.** A reasonable person under similar circumstances and with similar identities to the Complainant.
- ***Relevant Evidence*.** Evidence that tends to prove or disprove any element of an offense or any issue materials to resolving a complaint.
- ***Remedies*.** Typically, post-Resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's Education Program or Activity.
- ***Respondent*.** A person who is alleged to have engaged in conduct that could constitute Discrimination based on a protected characteristic, Harassment, or Retaliation for engaging in a protected activity under the Policy, or Other Prohibited Conduct.
- ***Resolution*.** The result of an Informal Resolution, a Formal Grievance Process, or Administrative Resolution Process.
- ***Sanction*.** A consequence imposed on a Respondent who is found to have violated the Policy.
- ***Sex.*** Birth Sex (under Title IX). Outside Title IX, Sex can include gender identity, gender expression, sexual orientation, sex characteristics, and sex stereotypes.
- ***Student*.** Any individual who has accepted an offer of admission, or who is registered for or enrolled in for-credit or non-credit-bearing coursework, and who maintains an ongoing educational relationship with the College.
- ***Supportive Measures.*** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- ***Title IX Coordinator (Same as Nondiscrimination Coordinator).*** At least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout the Policy may also encompass a Coordinator's designee for specific tasks.
- ***Title IX Team (same as Nondiscrimination Team).*** refers to the Nondiscrimination Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.
- ***Title VI Coordinator (same as Nondiscrimination Coordinator).*** At least one official designated by the College to ensure compliance with Title VI and the College'sTitle VI program. References to the Title VI Coordinator throughout the Policy may also encompass a Coordinator's designee for specific tasks.

APPENDIX B: PROTECTED CHARACTERISTICS AND RELATED DEFINITIONS

This appendix includes definitions of the characteristics protected under this Policy, as well as associated terms. This Policy does not attempt to prohibit the conduct listed below, in and of itself. Being Antisemitic, Islamophobic, Racist, Ableist, etc., may be protected expression under the First Amendment.

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The College prohibits only conduct that rises to the level of Discrimination, Discriminatory Harassment, Retaliation, and the Other Prohibited Conduct as defined in this Policy.

Age. Forty years of age or older for purposes of protection against Discrimination and Harassment under federal law and Policy.

Antisemitism. Conduct that excludes, harms, persecutes, expresses hatred or animus toward, or is unequal, based on an individual's or group's actual or perceived Jewish ancestry or ethnicity/ethnic characteristics, national origin, or is based on support for Jews, Israel (conceived as a Jewish state/collectivity), or Zionism

Caste. A person's actual or perceived descent-based or hereditary status, typically involving social stratification or classes.

Citizenship Status. An individual's legal relationship with the United States acquired through birth, naturalization, or another legal process.

Color. The actual or perceived pigmentation, complexion, or shade/tone of a person's skin (i.e., lightness, darkness, or other color characteristic of a person's skin), regardless of that person's Race or Ethnicity.

Colorism. Conduct that excludes, harms, persecutes, or expresses hatred or animus toward individuals or groups, or that is unequal, based on actual or perceived Color.

Creed**.** A set of moral or ethical beliefs and the practices and observances associated with those beliefs. Although Creed includes traditional religious beliefs, it also incorporates belief systems that may not be expressed by an organized religious group.

Disability. A physical, intellectual, or psychiatric impairment that substantially limits one or more major life activities, having a history or record of such an impairment, or being perceived by others as having such an impairment.

Domestic Violence Victim Status. The actual or perceived experience of being a domestic violence victim; attending, participating in, preparing for or requesting leave to attend to a criminal or civil proceeding related to domestic violence for which the individual or family or household member is a victim; or requesting an academic or employment adjustment because of domestic violence.

Ethnicity/Ethnic Characteristics. Belonging to a population, group, or subgroup of people based on shared culture/cultural background (e.g., language, food, music, dress, values, and beliefs), history, ancestry, or descent, or having the characteristics commonly attributed to such Ethnicity.

Family Responsibilities*.* Providing care for family members including children, parents, pregnant or nursing people, and those caring for aging or disabled family members.

Gender Expression. Outward expression of gender, often through clothing, behavior, mannerisms, speech patterns, and activities.

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Gender Identity. An individual's internal sense of their gender.

Islamophobia. Conduct that excludes, harms, persecutes, expresses hatred or animus toward, or is unequal, based on an individual's or group's actual or perceived Muslim or Islamic ancestry or Ethnicity/Ethnic Characteristics, National Origin, or is based on support for Muslims or Muslim-majority countries or nations.

Marital Statu*s*. The state of being married or unmarried.

National Origi*n*. A person's actual or perceived place of origin, ancestry, Ethnicity/Ethnic Characteristic, language or accent, cultural heritage, surname or name associated with a nation, or association with people of a particular nation or origin, regardless of a person's citizenship or immigration status. For the purposes of this definition, National Origin also encompasses actual or perceived Shared Ancestry, Ethnic Characteristics, or citizenship or residency in a country with a dominant religion or distinct religious identity.

Pregnancy or Related Conditions*.* Pregnancy, childbirth, false pregnancy, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

Race**.** A person's actual or perceived (by others) membership in a group characterized by shared physical, cultural, or ethnic traits. This includes traditional racial groups (e.g., White, Black, African American, Asian, American Indian, or Alaska Native) as well as those that may be defined by ancestry, ethnic identity, or perceived racial affiliation.

Racism*.* Conduct that excludes, harms, persecutes, or expresses hatred or animus toward individuals or groups, or that is unequal, based on actual or perceived Race.

Sex*.* Birth Sex (under Title IX). Outside Title IX, Sex can include gender identity, gender expression, sexual orientation, sex characteristics, and sex stereotypes.

Shared Ancestry**.** Actual or perceived ethnic, cultural, or ancestral background (e.g., lineage, familial origins, genetic inheritance, language, customs, societal norms, and heritage). Discrimination on the ground of Shared Ancestry can include Discrimination based on actual or perceived religion (e.g., Jewish, Christian, Muslim, Sikh, Hindu, Buddhist, Shinto, indigenous/religious group), when that Discrimination is interwoven with Shared Ancestry or Ethnicity/Ethnic Characteristics.

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DEFIANCE COLLEGE PROCEDURES FOR ALLEGED VIOLATIONS OF THE DISCRIMINATION, HARASSMENT, AND OTHER PROHIBITED CONDUCT POLICY FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES

1. Overview

Defiance College will act on any Notice/Formal Complaint of violation of the Discrimination, Harassment, Discrimination and Other Prohibited Conduct Policy ("the Policy") that the Nondiscrimination Coordinator or any other Official with Authority receives. The College uses two sets of procedures, known as Process A and Process B. Process A is compliant with the federal Title IX regulations. It involves an investigation and live hearing, including cross-examination. It also includes an Informal Resolution option.

Process A is applicable to all Formal Complaints of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking that occur within the College's Education Program or Activity.

Process B may apply to: (1) Formal Complaints of alleged Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking that fall outside of the College's Education Program or Activity; and (2) all other complaints of Discrimination, Harassment, and Retaliation on the basis of all Protected Characteristics. The choice between applying Process A or B is solely at the Nondiscrimination Coordinator's discretion. Occasionally, a Formal Complaint will include conduct that falls within both Processes A and B. When that occurs, Process A will typically be used to address all allegations.

2. Notice/Complaint

Upon receipt of Notice or a Formal Complaint of an alleged Policy violation, the Nondiscrimination Coordinator will initiate a prompt initial assessment to determine the College's next steps. The Nondiscrimination Coordinator will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

3. Collateral Misconduct

Collateral misconduct includes potential violations of other College policies that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Nondiscrimination Coordinator may consult with College officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the Nondiscrimination Coordinator's discretion. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the Student, Faculty, and Employee handbooks.

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APPENDIX C: FORMAL GRIEVANCE PROCESS FOR ALLEGED VIOLATIONS OF THE DISCRIMINATION, HARASSMENT, DISCRIMINATION AND OTHER PROHIBITED CONDUCT POLICY (KNOWN AS PROCESS "A")

1. Initial Assessment

The Nondiscrimination Coordinator conducts an initial assessment, typically within five (5) business days of receiving Notice or a Formal Complaint.[18] The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation.
- Determining whether the College has jurisdiction over the reported conduct.
- Offering and coordinating supportive measures for the Parties.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options
- Determining whether the Complainant wishes to file a Formal Complaint.
- Notifying the Respondent of the available resolution options if a Formal Complaint is made.

Helping a Complainant Understand Resolution Options

If the Complainant indicates they wish to file a Formal Complaint, the Nondiscrimination Coordinator will work with the Complainant to determine which resolution option they prefer. The Nondiscrimination Coordinator will seek to abide by the Complaint's wishes but may have to take another approach depending upon their assessment of the situation.

If the Formal Grievance Process is pursued, the Nondiscrimination Coordinator will initiate an investigation. If any party indicates that they want to pursue an Informal Resolution option, the Nondiscrimination Coordinator will refer the matter to the appropriate individuals(s) if the Nondiscrimination Coordinator determines Informal Resolution is available and the other Parties consent to participate. Informal Resolution cannot be used to resolve a Formal Complaint of Title IX Sexual Harassment involving an Employee Respondent and a Student Complainant.[19]

If the Complainant does not want any action taken, the Nondiscrimination Coordinator will consider that request. Typically, allegations of Student-on-Student and Employee-on-Employee misconduct will not prompt the Formal Grievance Process unless deemed necessary by the Nondiscrimination Coordinator, though the Complainant can elect to pursue the formal process in the future. The Nondiscrimination Coordinator may need to refer allegations of Employee-on-Student misconduct to the Formal Grievance Process regardless of the Complainant's wishes, depending on the nature of the allegations.

The Nondiscrimination Coordinator may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to sign a Formal Complaint.

[18] If circumstances require, the President or Nondiscrimination Coordinator will designate another person to oversee the resolution process should an allegation be made about the Nondiscrimination Coordinator or the Nondiscrimination Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.
[19] 34 C.F.R. § 106.45.

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Nondiscrimination Coordinator Authority to Initiate a Complaint

The Nondiscrimination Coordinator has ultimate discretion as to whether a Formal Complaint is made and may consult with appropriate College Employees, and/or conduct a violence risk assessment to aid their determination whether to sign a Formal Complaint on behalf of the Complainant. The Nondiscrimination Coordinator may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to sign a Formal Complaint.

If a Complainant is not participating or attempting to participate in the College's Education Program or Activity at the time of making a Formal Complaint, they can request that the Nondiscrimination Coordinator sign a Formal Complaint. When the Nondiscrimination Coordinator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Nondiscrimination Coordinator declines to sign a Formal Complaint, alternative processes may be available and can be explored with the Nondiscrimination Coordinator.

2. <u>Dismissal (Mandatory and Discretionary)</u>[20]

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

1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proven
2) The Sex-based conduct did not occur in the College's Education Program or Activity (including buildings or property controlled by recognized student organizations) and/or the College does not have control of the Respondent
3) The Sex-based conduct did not occur against a person in the United States
4) The Complainant alleging Sex-based conduct is not participating in or attempting to participate in the College's Education Program or Activity at the time of filing the Formal Complaint, and based on the available information, the Nondiscrimination Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the College[21]

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

1) A Complainant notifies the Nondiscrimination Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
2) The Respondent is no longer enrolled in or employed by the College

[20] These dismissal requirements are mandated by 34 CFR § 106.45.

[21] Such a Complainant is still entitled to supportive measures, but the Formal Grievance Process is not applicable unless the Nondiscrimination Coordinator signs the Formal Complaint in the event the Complainant cannot/will not do so.

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3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

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

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

This dismissal decision is appealable by any party. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

When the Nondiscrimination Coordinator has signed a Formal Complaint and later determines that the basis for signing is no longer compelling, the Nondiscrimination Coordinator may rescind the Formal Complaint and notify the Parties accordingly. This is not a dismissal, and there is no opportunity to appeal because the Complainant may still file a Formal Complaint if they wish to, in most circumstances.

3. <u>Appeal of Dismissal</u>

The Parties may appeal a decision to dismiss or not to dismiss their Formal Complaint. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal decision.

A dismissal may be appealed on the following grounds:

1) A procedural irregularity affected the outcome of the matter
2) New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter
3) The Nondiscrimination Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

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

If the appeal request does not provide information that meets the grounds in the Policy, the Dismissal Appeal Decision-maker will deny the request, and the Parties, their Advisors, and the Nondiscrimination Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in the Policy, then the Dismissal Appeal Decision-maker will notify all Parties and their Advisors, and the Nondiscrimination Coordinator of their decision and rationale in writing. The effect will be to reinstate the Complaint.

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In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Decision-maker has five (5) business days to review and decide on the appeal, though extensions can be granted at the Nondiscrimination Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Decision-maker may consult with the Nondiscrimination Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Nondiscrimination Coordinator will maintain documentation of all such consultation.

4. <u>Emergency Removal/Interim Suspension of a Student</u>

The College may emergency remove a Student accused of Title IX Sexual Harassment upon receipt of a Formal Complaint or at any time during the Formal Grievance Process. Prior to an emergency removal, the College will conduct an individualized risk assessment and may remove the Student if that assessment determines that an immediate threat to the physical health or safety of any Student or other individual justifies removal. Students accused of other forms of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct (not Sex-based) are subject to interim suspension, which can be imposed for safety reasons.

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

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

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

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

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5. Placing Employees on Leave

When the Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

6. Counter-Complaints

The College is obligated to ensure that the Formal Grievance Process is not abused for retaliatory purposes. Although the College permits the filing of counter-complaints, the Nondiscrimination Coordinator will use an initial assessment, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation. Counter-complaints determined to have been reported in good faith will be processed using the Formal Grievance Process. At the Nondiscrimination Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

7. Advisors in the Formal Grievance Process

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Formal Grievance Process, if they so choose.

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

A. Who Can Serve as an Advisor

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the resolution process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.[22] Parties have the right to choose not to have an Advisor in the initial stages of the Formal Grievance Process, prior to a hearing.

The Nondiscrimination Coordinator will offer to assign a trained Advisor to any party. If the Parties choose an Advisor from the College's Resolution Process Pool, the College will have trained the Advisor and familiarized them with the College's Formal Grievance Process.

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 to advise that party. However, all institutionally appointed Advisors will be provided with similar training.

[22] "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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If the Parties choose an Advisor from outside the Resolution Process Pool, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

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

The College may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Nondiscrimination Coordinator. The decision to grant this request is at the Nondiscrimination Coordinator's sole discretion and will be granted equitably to all Parties.

B. Advisor's Role in the Formal Grievance Process

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

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

The Title IX Regulations require a form of indirect questioning during the hearing, which must be conducted by the Parties' Advisors. The Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the Parties and witnesses.

C. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports, as well as the Directly Related Evidence file. Parties will be asked to sign releases for the College to share materials with an Advisor.

Advisors are expected to maintain the confidentiality of the records the College shares with them. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's confidentiality expectations.

D. Advisor Expectations

The College generally expects an Advisor to adjust their schedule to allow them to attend College meetings/interviews/hearings when planned, but the College may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

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

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

E. Advisor Policy Violations

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

8. Resolution Options Overview

The Formal Grievance Process is the College's primary resolution approach unless all Parties and the College agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Nondiscrimination Coordinator's discretion.

Resolution proceedings are private. All persons present at any time during a resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

There is an expectation of privacy around what Investigators share with Parties during interviews and for any materials the institution shares with the Parties during the resolution process. The Parties have discretion to share their own knowledge and evidence with others if they choose, except for information the Parties agree not to disclose as part of an Informal Resolution. College encourages Parties to discuss any sharing of information with their Advisors before doing so.

A. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Nondiscrimination Coordinator at any time prior to a Final Determination or the Nondiscrimination Coordinator may offer the option to the Parties. The College will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. To engage in Informal Resolution, a Complainant must first submit a Formal Complaint.

Three approaches to Informal Resolution are detailed in this section.

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1) **Supportive Resolution**. When the Nondiscrimination Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. Supportive Resolution involves only the party who opts for it.

2) **Accepted Responsibility**. When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and Nondiscrimination Coordinator are agreeable to the resolution terms.

3) **Alternative Resolution**. When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time and initiate or resume the Formal Grievance Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process should Informal Resolution not be successful.

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

Prior to engaging in Informal Resolution, the College will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that the College will maintain and under which circumstances they may be released.

Informal Resolution Approaches

(1) Supportive Resolution

Most commonly offered once a Formal Complaint is filed (whereas supportive measures, as described in Section 9 of the Policy, are offered in response to Notice). The Nondiscrimination Coordinator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the College's Education Program and Activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Nondiscrimination Coordinator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options and the Nondiscrimination Coordinator does not believe there is a need to sign a Formal Complaint. At the discretion of the Nondiscrimination Coordinator, this resolution option can result in an agreement between the Complainant and the College that does not require assent from any other party, as long as it does not unduly burden any other party or function punitively with respect to them.

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(2) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Nondiscrimination Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Nondiscrimination Coordinator will determine whether all Parties and the College are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Nondiscrimination Coordinator implements the accepted Finding that the Respondent is in violation of College Policy, implements agreed-upon restrictions and remedies, and determines any other appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

(3) Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction between the Parties; indirect action by the Nondiscrimination Coordinator or other appropriate College officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Nondiscrimination Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Nondiscrimination Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

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The Nondiscrimination Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Grievance Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Nondiscrimination Coordinator must consider whether to dissolve the agreement and reinstate the Formal Grievance Process to remedy the impact as required by law. The results of Formal Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the College will initiate or continue an investigation and subsequent Formal Grievance Process to determine whether the Policy has been violated.

B. Formal Grievance Process (begins at Section 10. below)

9. Resolution Process Pool

The College relies on a pool of individuals ("the Pool") to carry out the resolution options.

A. Pool Member Roles

Resolution Process Pool members are trained annually, and can serve in any of the following roles at the Nondiscrimination Coordinator's discretion:

- Appropriate intake of and initial guidance pertaining to Formal Complaints
- Perform or assist with initial assessment
- Advisor to Parties
- Informal Resolution Facilitator
- Investigator
- Hearing Facilitator
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

B. Pool Member Appointment

The Nondiscrimination Coordinator, in consultation with senior administrators as necessary, appoints the Resolution Process Pool, which acts with independence and impartiality. Although members of the Resolution Process Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Formal Complaints, the College can also designate permanent roles for individuals in the Resolution Process Pool.

External, trained third-party neutral professionals may also be used to serve in pool roles.

C. Pool Member Training (See training materials posted online)

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10. Notice of Investigation and Allegations (NOIA)

The Nondiscrimination Coordinator will provide the Parties written Notice of the Investigation and Allegations (the "NOIA") upon commencement of the Formal Grievance Process. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all allegations
- The names of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a Final Determination that the Policy has been violated
- The name(s) of the Investigator(s), along with a process to notify the Nondiscrimination Coordinator of any conflict of interest that the Investigator(s) may have in advance of the interview process
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all Relevant and Directly Related Evidence obtained
- A statement of the potential sanctions/responsive actions that could result
- A statement about the College's policy on Retaliation
- Information about process confidentiality
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the Parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Formal Grievance Process
- Information about how a party may request disability accommodations or other support assistance during the Formal Grievance Process
- A link to the College's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the Parties' College-issued email or other approved accounts. Once emailed and/or received in-person, notice is presumptively delivered.

11. Resolution Timeline

The College will make a good faith effort to complete the Formal Grievance Process within ninety (90) business days, including any appeals, which the Nondiscrimination Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Formal Grievance

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Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The College will promptly resume its Formal Grievance Process as soon as feasible. During such a delay, the College will implement and maintain supportive measures for the Parties as deemed appropriate.

College action(s) or processes 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.

The College will make a good faith effort to complete the Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

12. Ensuring Impartiality

No individual materially involved in the administration of the Formal Grievance Process, including the Nondiscrimination Coordinator, Investigator(s), and Decision-maker(s), may have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Nondiscrimination Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Formal Grievance Process, and the Nondiscrimination Coordinator will determine whether the concern is reasonable and supportable. If so, another Resolution Process Pool member, or other trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Nondiscrimination Coordinator, concerns should be raised with the President.

The Formal Grievance Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that the Respondent violated the Policy and evidence that supports that the Respondent did not violate the Policy. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

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13. Witness Role and Participation in the Investigation

Witnesses who are College Employees are expected to cooperate with and participate in the College's investigation and Formal Grievance Process. Student witnesses and witnesses from outside the College community are encouraged to cooperate with College investigations and to share what they know about a Formal Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Google Meet, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The College will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

14. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.

15. Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider Relevant or Directly Related Evidence.

Neither the investigation nor the hearing will consider:

1) Questions or evidence about the Complainant's sexual predisposition[23]
2) Questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent[24]
3) Questions or evidence about a party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist unless the party or witness provides voluntary, written consent for the records to be considered

[23] The College defines "predisposition" in alignment with its commonly understood and dictionary definition of being inclined toward a thing, action, or person. Predisposition does not encompass an aversion, or being disinclined to a thing, action, or person.

[24] The College defines "prior sexual behavior" to include only sexual actions taken by or involving Complainant prior to the reported incident(s), not to the absence of such actions.

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Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

16. <u>Investigation</u>

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The College may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Investigations involve the following:

- Determining the names of and contacting all involved Parties and potential witnesses to participate in an investigation interview
- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
- Conducting any necessary follow-up interviews with Parties or witnesses
- Providing the Parties and witnesses an opportunity to verify the accuracy of either a summary or transcript of their interview(s)
- Soliciting the names of suggested witnesses and questions each party wishes to have asked of another party or witness
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Compiling a Directly Related Evidence File
- Providing the Parties and their respective Advisors an electronic or hard copy of the Draft Investigation Report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten

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(10)-business-day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report.
- Sharing the Final Investigation Report with the Nondiscrimination Coordinator and/or legal counsel for their review and feedback
- Providing the Nondiscrimination Coordinator with the Final Investigation Report and Directly Related Evidence File

17. Referral for Hearing

Provided that the Formal Complaint is not resolved through Informal Resolution, once the Final Investigation Report is shared with the Parties, the Nondiscrimination Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation – when the Final Investigation Report is transmitted to the Parties and the Decision-maker – unless all Parties and the Decision-maker agree to an expedited timeline.

The Nondiscrimination Coordinator will select an appropriate Decision-maker from the Resolution Process Pool and provide a copy of the Final Investigation Report and the file of Directly Related Evidence.

18. Hearing Decision-maker

The Decision-maker will not have had any previous involvement with the Formal Complaint. The Nondiscrimination Coordinator may elect to have an alternate from the Resolution Process Pool sit in throughout the hearing process if a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Nondiscrimination Coordinator may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Nondiscrimination Coordinator.

19. Live Hearing Requirements

The following provisions apply to a live hearing:

- **Hearing Venue Options and Recordings**. The live hearing may occur in person or via video technology. The Decision-maker and Parties must be able to simultaneously see and hear a party

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or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Nondiscrimination Coordinator's discretion.
    - The Parties may make a request to the Nondiscrimination Coordinator that the hearing be held in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Nondiscrimination Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
    - All hearings will be recorded, and Parties may request a copy of the recording from the Nondiscrimination Coordinator following the live hearing.
    - No unauthorized recordings are permitted.
- **Scheduling.** Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the College's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Formal Grievance Processes that occur during months between contracts.
- **Hearing Participants.** Persons who may be present for a hearing include the Decision-maker, hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-maker. Witnesses are present only during their portion of the testimony.
- **Advisors.** The Parties may have the assistance of an Advisor of their choice at the hearing or can request that the College appoint a trained Advisor for them. Appointed Advisors are not attorneys. If a party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves.
    - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Nondiscrimination Coordinator, with each party being provided the same opportunity.
    - Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a matter consistent with the Policy.
    - During the hearing, all questions that a party wishes to ask must be posed by the Advisor, not the Parties.
    - If the party does not have an Advisor, the Nondiscrimination Coordinator will provide the party with an Advisor for the purpose of Advisor-conducted questioning.
- **Impact Statements.** Each party may submit an impact and/or mitigation statement to the Nondiscrimination Coordinator that the Decision-maker will review during any sanction determination.
    - Upon receipt of an impact and/or mitigation statement, the Nondiscrimination Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist.
    - The Nondiscrimination Coordinator will only provide the impact statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Nondiscrimination Coordinator shares the impact statements with the Decision-maker, they will also be shared with the Parties.

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- **Disability Accommodations and Other Assistance**. Parties should contact the Nondiscrimination Coordinator at least five (5) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- **Conflicts of Interest or Bias.** The Decision-maker must not have a bias for or against Complainants or Respondents generally or the individual Complainant or Respondent involved in the Formal Complaint.
    - The Decision-maker must recuse themselves if such bias or conflict of interest exists.
    - If the Decision-maker believes there is possible conflict of interest or bias, they will consult with the Nondiscrimination Coordinator about possible recusal or removal.
    - The Parties may raise challenges that the Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Nondiscrimination Coordinator within two (2) business days of receiving the hearing notice.
    - The Nondiscrimination Coordinator will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
    - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Nondiscrimination Coordinator will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker and Parties.**
    - The Decision-maker will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least ten (10) business days in advance of the hearing.
    - The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.[25]

20. <u>Hearing Notice</u>

The Nondiscrimination Coordinator will send the Parties a notice of hearing letter no less than ten (10) business days prior to the hearing. Once emailed and/or received in-person, notice is presumptively delivered. The notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result
- The time, date, and location of the hearing
- A description of any technology that will be used to facilitate the hearing
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, the identity of the Decision-maker,

[25] Hard-copy materials may be provided upon request to the Nondiscrimination Coordinator. The Final Investigation Report and Relevant Evidence may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance

21. <u>Witness Participation</u>

Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. They may participate in-person or via video technology that allows the Decision-maker and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an Advisor without the Nondiscrimination Coordinator's express permission. At the discretion of the Decision-maker, a witness may participate by phone if no other reasonable alternative is available.

The Nondiscrimination Coordinator will notify all witnesses of their requested participation in the hearing at least three (3) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Nondiscrimination Coordinator may reschedule the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- All Parties and the Decision-maker assent to the new witness's participation in the hearing without remanding the Formal Complaint back to the Investigator,
- The Decision-maker deems the evidence presented by the new witness to be relevant and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least three (3) business days to review the relevant portions of the new witness's statements, if such statements are submitted
- Remand the Formal Complaint back to the Investigator for further investigation or verification
- Allow the Parties to review and comment on the testimony of the new witness[26]

If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing absent the new witness's participation.

22. <u>Pre-Hearing Meetings</u>

The Decision-maker will offer to convene pre-hearing meeting(s) with the Parties and their Advisors to familiarize them with the hearing process and invite them to submit the questions or topics they wish to

[26] 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

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ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-maker will work with the Parties to finalize a witness list for the hearing, and the Nondiscrimination Coordinator will notify any witnesses of the hearing's logistics. The Decision-maker, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Decision-maker will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

23. Hearing Procedures

A. Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant, the Parties and Decision-maker must agree to admit it into the record. If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing absent the new evidence.

The new relevant evidence will be admitted to the record if:

- All Parties and the Decision-maker assent to the new evidence being included in the hearing without remanding the Formal Complaint back to the Investigator,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing

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- Provide the Parties with at least five (5) business days to review the relevant evidence
- Remand the Formal Complaint back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing without allowing the new evidence.

B. Collateral Misconduct

The Decision-maker has the authority to hear and make determinations on all allegations of Discrimination, Harassment, Retaliation, and Other Prohibited Conduct under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with the Discrimination, Harassment, Retaliation, or Other Prohibited Conduct, even though those collateral allegations may not specifically fall within the Policy.

C. Joint Hearings

In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Nondiscrimination Coordinator may permit the investigation and/or hearings pertinent to each Respondent or Formal Complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each Formal Complaint with respect to each alleged policy violation.

D. Introductions and Hearing Procedure Explanation

The Decision-maker will:

- Explain the hearing procedures
- Introduce the participants
- Answer any procedural questions prior to and as they arise throughout the hearing

E. Investigator Presentation of Final Investigation Report

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

F. Testimony and Questioning

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through their Advisors.

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All questions are subject to the Decision-maker's relevance determination. The Advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted). The proceeding will pause to allow the Decision-maker to consider the question (and state it if it has not already been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and has the final say on all questions and relevance determinations. The Decision-maker may consult with legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, refer them to the Nondiscrimination Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for Investigator bias.

G. Refusal to Submit to Questioning and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on the available Relevant Evidence in making a Final Determination. The Decision-maker may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions. Typically, after brief opening statements, the order of questioning will be questions from the Decision-maker, questions from the party's own Advisor, then questions from the other Parties' Advisors. The same order will be used for questioning of witnesses, who do not typically make opening statements. The Parties then make brief closing statements, and then the hearing transitions into closed session for deliberation.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

H. Hearing Recordings

The College records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate College officials will be permitted to review the recording or review a transcript of the recording upon request to the Nondiscrimination Coordinator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

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24. Deliberation and Determination

After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of evidence. If a panel is used, a simple majority vote is required to determine the Finding. Deliberations are not recorded.

When there is a Finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Nondiscrimination Coordinator will ensure that each of the Parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker will also review any pertinent conduct history provided and will determine the appropriate sanction(s).

The Decision-maker will then prepare a written statement detailing all Findings and Final Determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Nondiscrimination Coordinator.

This statement must be submitted to the Nondiscrimination Coordinator within seven (7) business days of the end of deliberations unless the Nondiscrimination Coordinator grants an extension. If an extension is granted, the Nondiscrimination Coordinator will notify the Parties.

25. Notice of Outcome

The Nondiscrimination Coordinator will provide the Parties with a written outcome notification within ten (10) business days of the conclusion of the Formal Grievance Process. The outcome notification will specify the Finding for each alleged Policy violation, any sanction(s) that may result, which the College is permitted to share pursuant to federal or state law, and a detailed rationale, written by the Decision-maker, supporting the Findings to the extent the College is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Nondiscrimination Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official College records, or emailed to the Parties' College-issued or other approved email account. Once emailed and/or received in person, the outcome notification is presumptively delivered.

26. Rights of the Parties (See Appendix E)

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27. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need to remedy the effects of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- The Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible once a Determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in the Procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

A. Student Sanctions

The following are the common sanctions that may be imposed upon Students singly or in combination:

- **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.
- **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.
- **Fines**: Reasonable fines may be imposed. Fines are specified to include: $100 for intentionally or negligently activating a fire alarm.
- **Community/College Service Requirements**: For a student or organization to complete a specific supervised Community/College service.
- **Loss of Privileges**: The student will be denied specified privileges for a designated period of time.
- **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).
- **Behavioral Requirement**: This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.

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- **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.
- **Restriction of Visitation Privileges**: May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- **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.
- **College Housing Reassignment**: Reassignment to another College housing facility. Residential Life personnel will decide on the reassignment details.
- **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.
- **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.
- **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.
- **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:
- **Ineligibility to hold any office** in any student organization recognized by the College or hold an elected or appointed office at the College; or
- **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.
- **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.

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- **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.
- **Withholding Diploma**: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement as a sanction if the student is found responsible for an alleged violation.
- 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.
- **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.

B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student groups organizations singly or in combination:

- **Warning**: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation**: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of College funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension**: Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in College-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.
- **Expulsion:** Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- **Loss of Privileges:** Restricted from accessing specific College privileges for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

C. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an Employee who has engaged in Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct include:

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- Verbal or Written Warning
- Performance Improvement/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

28. Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent withdraws from the College, the Formal Grievance Process typically ends with a dismissal, as the College has lost primary disciplinary jurisdiction over the withdrawn Student. However, the College may continue the Formal Grievance Process when, at the discretion of the Nondiscrimination Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Formal Grievance Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When a Student withdraws or takes a leave of absence while the process is pending, the Student may not return to the College in any capacity until the Formal Complaint is resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the Nondiscrimination Coordinator has discretion to dismiss the Formal Complaint and bar the Student from returning. The Registrar, Office of Admissions, and HR may be notified accordingly.

If the Student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the Formal Grievance Process may continue remotely. If found in violation, the Student is not permitted to return to the College unless and until all sanctions, if any, have been satisfied.

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B. Employees

Should an Employee Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with the College with unresolved allegations pending, the Formal Grievance Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the former Employee. However, the College may continue the Formal Grievance Process when, at the discretion of the Nondiscrimination Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Formal Grievance Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When an Employee resigns and the Formal Complaint is dismissed, the Employee may not return to the College in any capacity. The Registrar, Office of Admissions, and HR will be notified accordingly. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the College. The records retained by the Nondiscrimination Coordinator will reflect that status. All Defiance College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

29. Appeal of the Final Determination

The Nondiscrimination Coordinator will designate an Appeal Decision-maker from the Resolution Process Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Formal Grievance Process for the Formal Complaint. If a panel is used, the Nondiscrimination Coordinator will designate a voting chair.

A. Appeal Grounds

Appeals are limited to the following grounds:

1) A procedural irregularity affected the outcome of the matter.
2) There is new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter
3) The Nondiscrimination Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

B. Appeal Request

Any party may submit a written appeal request to the Nondiscrimination Coordinator within three (3) business days of the delivery of the notice of outcome.

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The appeal request will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the appeal grounds (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the appeal request does not provide information that meets the grounds in the Procedures, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the appeal request meets the grounds in the Procedures, then the Appeal Decision-maker will notify all Parties and their Advisors, the Nondiscrimination Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors, the Nondiscrimination Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the appeal request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that appeal request will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in the Procedures and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Nondiscrimination Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within three (3) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified in writing.

No party may submit any new appeal request after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

C. Appeal Determination Process

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard of evidence.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction(s).

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The Appeal Decision-maker may consult with the Nondiscrimination Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Nondiscrimination Coordinator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Nondiscrimination Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new Resolution Process Pool members serving in the Investigator and Decision-maker roles.

A notice of appeal outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the College is permitted to share according to federal or state law, and the rationale supporting the essential Findings to the extent the College is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official institutional records, or emailed to the Parties' College-issued email or other approved account. Once emailed and/or received in person, the appeal outcome letter will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

E. Sanction Status During the Appeal

Any sanctions imposed as a result of the Final Determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal and interim suspension procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within two (2) business days of implementation.

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30. Long-Term Remedies/Other Actions

Following the conclusion of the Formal Grievance Process, and in addition to any sanctions implemented or Informal Resolution terms, the Nondiscrimination Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the College community that are intended to stop the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the Nondiscrimination Coordinator's discretion, the Parties may be provided certain long-term support or measures even if no Policy violation is found.

When no Policy violation is found, the Nondiscrimination Coordinator will address any remedies the College owes the Respondent to ensure no effective denial of educational access.

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

31. Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College.

Supervisors are expected to enforce completion of sanctions/responsive actions for their Employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Nondiscrimination Coordinator's satisfaction.

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32. Recordkeeping

For a period of at least seven (7) years following the conclusion of the Formal Grievance Process, the College will maintain records of:

1) Each Discrimination, Harassment, Retaliation, and Other Prohibited Conduct Formal Grievance Process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
2) Any disciplinary sanctions imposed on the Respondent
3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the College's Education Program or Activity
4) Any appeal and the result therefrom
5) Any Informal Resolution and the result therefrom
6) All materials used to train the Nondiscrimination Coordinator, Nondiscrimination Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the College's resolution processes. College will make these training materials publicly available on College's website
7) Any other actions taken in response to a report or Formal Complaint including:
    a. The basis for all conclusions that the response was not deliberately indifferent
    b. Any measures designed to restore or preserve equal access to the College's Education Program or Activity

The College will also maintain any and all records in accordance with federal and state laws.

33. Disability Accommodations

Defiance College is committed to providing reasonable accommodations and support to qualified Students, Employees, or others with disabilities to ensure equal access to the College's resolution processes.

Anyone needing such accommodations or support should contact the Nondiscrimination Coordinator, who will work with the Accessibility Services as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

34. Other Support

College will address other reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

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APPENDIX D: ADMINISTRATIVE RESOLUTION FOR ALLEGED VIOLATIONS OF THE DISCRIMINATION, HARASSMENT, AND OTHER PROHIBITED POLICY (KNOWN AS PROCESS "B")

1. Initial Assessment

The Nondiscrimination Coordinator conducts an initial assessment, typically within five (5) business days of receiving Notice.[27] The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation.
- Determining whether the College has jurisdiction over the reported conduct
- Offering and coordinating supportive measures for the Parties
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options
- Determining whether the Complainant wishes to file a Formal Complaint
- Notifying the Respondent of the available resolution option if a Formal Complaint is made

Helping a Complainant to Understand Resolution Options

If the Complainant indicates they wish to initiate the Administrative Resolution Process, the Nondiscrimination Coordinator will work with the Complainant to determine which resolution option they want to pursue. The Nondiscrimination Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

Upon receiving a complaint that falls under the Administrative Resolution Process, the Nondiscrimination Coordinator will initiate an investigation.

If any party indicates that they want to pursue an Informal Resolution option, the Nondiscrimination Coordinator will refer the matter to the appropriate individuals(s) if the Nondiscrimination Coordinator determines Informal Resolution is available and the other Parties consent to participate.

If the Complainant does not want any action taken, the Nondiscrimination Coordinator will consider that request, and in most circumstances no resolution process will be initiated (unless deemed necessary by the Nondiscrimination Coordinator), though the Complainant can elect to initiate one later, if desired.

The Nondiscrimination Coordinator may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to initiate a resolution process.

[27] If circumstances require, the President or Nondiscrimination Coordinator will designate another person to oversee the resolution process should an allegation be made about the Nondiscrimination Coordinator or the Nondiscrimination Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

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Nondiscrimination Coordinator Authority to Initiate the Administrative Resolution Process

The Nondiscrimination Coordinator has ultimate discretion as to whether to pursue an Administrative Resolution Process and may consult with appropriate College Employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a complaint.

When the Nondiscrimination Coordinator initiates a complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Nondiscrimination Coordinator declines to initiate a complaint, alternative processes may be available and can be explored with the Nondiscrimination Coordinator.

The process followed considers the Parties' preference but is ultimately determined at the Nondiscrimination Coordinator's discretion. If at any point during the initial assessment or investigation the Nondiscrimination Coordinator determines that reasonable cause does not support the conclusion that Respondent violated the Policy, the process will end, and the Parties will be notified.

The Complainant may request that the Nondiscrimination Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Nondiscrimination Coordinator, but the request is usually only granted in extraordinary circumstances.

2. <u>Interim Suspension</u>

The College may interim suspend a Student accused of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct upon receipt of Notice or at any time during the Administrative Resolution Process.

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

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the interim suspension is appropriate, should be modified, or should be lifted. When this meeting is not requested within two (2) business days, objections to the interim suspension will be deemed waived. A Student can later request a meeting to show why they no longer pose a safety concern because the related conditions have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Nondiscrimination Coordinator determines it is fair for them to do so.

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

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

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3. Placing an Employee on Leave

When the Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

4. Counter-Complaints

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

Counter-complaints determined to have been reported in good faith will be processed using the Administrative Resolution Process below. At the Nondiscrimination Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial allegations.

5. Advisors in the Administrative Resolution Process

The Parties may each have an Advisor of their choice present with them for all meetings and interviews within the Administrative Resolution Process.

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

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

Upon request, and at the Nondiscrimination Coordinator's discretion, the Parties may be permitted to have more than one Advisor. To ensure fairness, if one party is allowed another Advisor, the other party must be allowed one to as well.

A. Who Can Serve as an Advisor?

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the resolution process. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.[28]

[28] "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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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 to advise that party.

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

The College may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Nondiscrimination Coordinator. The decision to grant this request is at the Nondiscrimination Coordinator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the College will agree to copy both the party and their Advisor on all communications.

B. Advisor's Role in the Administrative Resolution Process

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

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

C. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports. Parties will be asked to sign releases for the College to share materials with an Advisor.

Advisors are expected to maintain the confidentiality of the records the College shares with them. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's confidentiality expectations.

D. Advisor Expectations

The College generally expects an Advisor to adjust their schedule to allow them to attend College meetings/interviews when planned, but the College may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

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

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

E. Advisor Policy Violations

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

6. Resolution Options Overview

The Administrative Resolution Process is the College's primary resolution approach unless all Parties and the College agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Nondiscrimination Coordinator's discretion.

Resolution proceedings are private. All persons present at any time during a resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

A. Informal Resolution

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

Three approaches to Informal Resolution are detailed in this section.

1) **Supportive Resolution**. When the Nondiscrimination Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. Supportive Resolution involves only the party who opts for it.

2) **Accepted Responsibility**. When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and College are agreeable to the resolution terms.

3) **Alternative Resolution**. When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation,

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shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution Process should Informal Resolution not be successful.

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

Prior to implementing Informal Resolution, the College will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

Informal Resolution Approaches

(1) Supportive Resolution

Most commonly offered once a complaint is filed (whereas supportive measures, as described in Section 9. of the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy, are offered in response to Notice). The Nondiscrimination Coordinator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the College's education program and activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Nondiscrimination Coordinator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Nondiscrimination Coordinator does not believe there is a need to sign a complaint. At the discretion of the Nondiscrimination Coordinator, this resolution option can result in an agreement between the Complainant and the College that does not require assent from any other party, as long as it does not unduly burden any other party or function punitively with respect to them.

(2) Educational Conversation

The Complainant(s) may request that the Nondiscrimination Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not

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to attend, the Nondiscrimination Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

(3) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Administrative Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Nondiscrimination Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Nondiscrimination Coordinator will determine whether all Parties and the College are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Nondiscrimination Coordinator implements the accepted finding that the Respondent is in violation of College Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Administrative Resolution Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

(4) Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Nondiscrimination Coordinator or other appropriate College officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Nondiscrimination Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct

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- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Nondiscrimination Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Nondiscrimination Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Nondiscrimination Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Administrative Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Nondiscrimination Coordinator must consider whether to dissolve the agreement and reinstate the Administrative Resolution Process to remedy the impact as required by law. The results of reports resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the College will initiate or continue an investigation and subsequent Administrative Resolution Process to determine whether the Policy has been violated.

B. Administrative Resolution Process

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If an Administrative Resolution is initiated, the Nondiscrimination Coordinator will provide written notification of the investigation to the Parties at an appropriate time during the

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investigation. Typically, notice is given at least two (2) business days in advance of an interview. Advanced notice facilitates the Parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Written notification will include a meaningful summary of the allegations and the policies alleged to have been violated and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official College records, or emailed to the Parties' College-issued or other approved email account. Once emailed and/or received in-person, notice is presumptively delivered.

The College aims to complete all investigations within a sixty (60) business day-time period, which can be extended by the Nondiscrimination Coordinator as necessary for appropriate cause. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once an investigation is initiated, the Nondiscrimination Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the College community.

The College will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The College will promptly resume its Resolution Process as soon as feasible. During such a delay, the College will implement and maintain supportive measures for the Parties 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.

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

7. Resolution Process Pool

The College relies on a pool of individuals (the "Pool") to carry out the resolution options.

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A. Pool Member Roles[29]

Resolution Process Pool members are trained annually, and can serve in any of the following roles, at the Nondiscrimination Coordinator's discretion:

- Appropriate intake of and initial guidance pertaining to Notice
- Perform or assist with initial assessment
- Advisor to Parties
- Informal Resolution Facilitator
- Investigator
- Decision-maker
- Appeal Decision-maker

B. Pool Member Appointment

The Nondiscrimination Coordinator, in consultation with senior administrators as necessary, appoints the Resolution Process Pool, which acts with independence and impartiality.[30] Although members of the Resolution Process Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, the College can also designate permanent roles for individuals in the Resolution Process Pool.

External, trained third-party neutral professionals may also be used to serve in pool roles.

C. Pool Member Training (See training materials (posted online)

8. <u>Notice of Investigation and Allegations</u>

The Nondiscrimination Coordinator will provide the Parties written Notice of the Investigation and Allegations (the "NOIA") upon commencement of the Administrative Resolution Process. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all allegations
- The names of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a Final Determination that the Policy has been violated
- The name(s) of the Investigator(s), along with a process to notify the Nondiscrimination Coordinator of any conflict of interest that the Investigator(s) may have in advance of the interview process

[29] External, trained third-party neutral professionals may also serve in Resolution Process Pool roles.
[30] External, trained third-party neutral professionals may also be used to serve in Resolution Process Pool roles.

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- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all Relevant Evidence obtained
- A statement of the potential sanctions/responsive actions that could result
- A statement about the College's policy on Retaliation
- Information about process confidentiality
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the Parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Administrative Resolution Process
- Information about how a party may request disability accommodations or other support assistance during the Administrative Resolution Process
- A link to the College's VAWA Brochure, if applicable
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the Parties' College-issued email or other approved accounts. Once emailed and/or received in-person, notice is presumptively delivered.

9. <u>Resolution Timeline</u>

The College will make a good faith effort to complete the Administrative Resolution Process within sixty (60) business days, including any appeals, which the Nondiscrimination Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Administrative Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The College will promptly resume its Administrative Resolution Process as soon as feasible. During such a delay, the College will implement and maintain supportive measures for the Parties as deemed appropriate.

College action(s) or processes 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.

The College will make a good faith effort to complete the Administrative Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

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10. Ensuring Impartiality

No individual materially involved in the administration of the Administrative Resolution Process, including the Nondiscrimination Coordinator, Investigator(s), and Decision-maker(s), may have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Nondiscrimination Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Administrative Resolution Process, and the Nondiscrimination Coordinator will determine whether the concern is reasonable and supportable. If so, another Resolution Process Pool member, or other trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Nondiscrimination Coordinator, concerns should be raised with the President.

The Administrative Resolution Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that the Respondent violated the Policy and evidence that supports that the Respondent did not violate the Policy. Credibility determinations will not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

11. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The College may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Investigations involve the following:

- Determining the identity of and contacting all involved Parties and potential witnesses to participate in an investigation interview
- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose

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- Conducting any necessary follow-up interviews with Parties or witnesses
- Providing the Parties and witnesses an opportunity to verify the accuracy of either a summary or transcript of their interview(s)
- Soliciting the names of suggested witnesses and questions each party wishes to have asked of another party or witness
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Providing the Parties and their respective Advisors an electronic or hard copy of the Draft Investigation Report for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report.
- Sharing the Final Investigation Report with the Nondiscrimination Coordinator [and/or legal counsel] for their review and feedback
- Providing the Nondiscrimination Coordinator with the Final Investigation Report, with one of two options:
    - In the report, include a recommended determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred; OR
    - Gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation.

12. Investigation Process Details

A. Witness Role and Participation in the Investigation

Witnesses who are College Employees are expected to cooperate with and participate in the College's investigation and Administrative Resolution Process. Student witnesses and witnesses from outside the College community are encouraged to cooperate with College investigations and to share what they know about a complaint.

Party and/or witness interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The College will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

B. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Administrative Resolution Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

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All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.

C. Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant, the Parties and Decision-maker must agree to admit it into the record. If the evidence is deemed not relevant, the Decision-maker may proceed with making Findings and a Final Determination absent the new evidence.

The new relevant evidence will be admitted to the record if:

- All Parties and the Decision-maker assent to the new evidence being considered without remanding the matter back to the Investigator,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Provide the Parties with at least five (5) business days to review the relevant evidence
- Remand the matter back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Decision-maker may proceed with making Findings and a Final Determination without allowing the new evidence.

Any evidence that is relevant and credible may be considered, including a Respondent's prior disciplinary history as well as evidence indicating a pattern of misconduct, subject to the limitation in (D) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

D. Evidentiary Exclusions

Unless the Decision-maker determines it is appropriate, the investigation and the Finding do not consider: (1) incidents not directly related to the possible violation(s), unless they evidence a pattern; (2) the irrelevant sexual behavior of the Parties (though there may be a limited exception made with regard to the sexual behavior between the Parties); (3) irrelevant character evidence.

Although the Respondent's previous conduct violations (if any) are not generally admissible as information supporting the current allegation(s), 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.

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The College uses a progressive discipline system, thus previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

Character witnesses or evidence may be offered. The Decision-maker will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

A party's or witness's records that are made or maintained by a physician, psychologist, or psychiatrist are inadmissible unless the party or witness provides voluntary, written consent for the records to be considered.

13. Respondent Admits Responsibility

If a Respondent elects to admit to the charged violations and waive further process at any point in the Administrative Resolution Process, the Decision-maker is authorized to accept that admission, adopt it as their Finding/Final Determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the Finding/Final Determination/sanctions, or does not admit to all charged violations, the Administrative Resolution Process continues to its conclusion. The Complainant retains their right to appeal a Final Determination when a Respondent admits responsibility.

14. Determination

Within three (3) business days of receiving the Investigator's Final Investigation Report, the Nondiscrimination Coordinator reviews the report and all responses, and then makes the Final Determination by applying the standard of evidence.[31]

If the record is incomplete, the Nondiscrimination Coordinator may direct the Investigator(s) to re-open the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the Parties or any witnesses if needed.

The Nondiscrimination Coordinator may invite and consider impact and/or mitigation statements from the Parties when determining appropriate sanction(s), if any.

15. Notice of Outcome

The Nondiscrimination Coordinator will provide the Parties a written outcome notification within three (3) business days of the Resolution. The outcome notification will specify the Finding for each alleged Policy violation, any sanction(s) that may result, which the College is permitted to share pursuant to federal or state law, and a detailed rationale, written by the Decision-maker, supporting the Findings to the extent the College is permitted to share under federal or state law.

[31] When the Nondiscrimination Coordinator is the Investigator or has been heavily involved in the process prior to a determination, a Decision-maker should be designated from the Resolution Process Pool to ensure there is no conflict of interest.

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The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals. Unless based on the Respondent's admission of responsibility, the Determination may be appealed by any party.

The Nondiscrimination Coordinator will provide the Parties with the outcome notification, or without significant time delay between notifications. Notice may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official College records, or emailed to the Parties' College-issued or other approved email account. Once emailed and/or received in-person, notice is presumptively delivered.

16. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive action include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need to remedy the effects of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- The Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible once a Determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in the Procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

A. Student Sanctions

The following are the common sanctions that may be imposed upon Students singly or in combination:

- **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.
- **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.
- **Fines**: Reasonable fines may be imposed. Fines are specified to include: $100 for intentionally or negligently activating a fire alarm.

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- **Community/College Service Requirements**: For a student or organization to complete a specific supervised Community/College service.
- **Loss of Privileges**: The student will be denied specified privileges for a designated period of time.
- **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).
- **Behavioral Requirement**: This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- **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.
- **Restriction of Visitation Privileges**: May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- **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.
- **College Housing Reassignment**: Reassignment to another College housing facility. Residential Life personnel will decide on the reassignment details.
- **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.
- **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.
- **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.
- **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:
- **Ineligibility to hold any office** in any student organization recognized by the College or hold an elected or appointed office at the College; or
- **Ineligibility to represent the College** to anyone outside the College community in any way including: participating in the study abroad program, attending conferences, or

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representing the College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.

- **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.
- **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.
- **Withholding Diploma**: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement as a sanction if the student is found responsible for an alleged violation.
- **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.
- **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.

B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student groups organizations singly or in combination:

- **Warning**: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation**: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of College funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension**: Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in College-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.
- **Expulsion:** Permanent termination of student organization recognition and revocation of

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the privilege to congregate and conduct business on campus as an organization for any reason.
- **Loss of Privileges:** Restricted from accessing specific College privileges for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

C. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an Employee who has engaged in Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct include:

- Verbal or Written Warning
- Performance Improvement/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

17. Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a Respondent decide not to participate in the Administrative Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent withdraws from the Recipient, the Administrative Resolution Process typically ends with a dismissal, as the Recipient has lost primary disciplinary jurisdiction over the withdrawn Student. However, the Recipient may continue the Administrative Resolution Process when, at the discretion of the Administrator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Administrative Resolution Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

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When a Student withdraws or takes a leave of absence while the process is pending, the Student may not return to the College in any capacity until the allegations are resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the Nondiscrimination Coordinator has discretion to dismiss the allegations and bar the Student from returning. The Registrar, Office of Admissions, and HR may be notified accordingly.

If the Student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the Administrative Resolution Process may continue remotely. If found in violation, that Student is not permitted to return to College unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an Employee Respondent decide not to participate in the Administrative Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with the College with unresolved allegations pending, the Administrative Resolution Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the former Employee. However, the College may continue the Administrative Resolution Process when, at the discretion of the Nondiscrimination Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the allegations are dismissed or pursued to completion of the Administrative Resolution Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When an Employee resigns and the allegations are dismissed, the Employee may not return to the College in any capacity. The Registrar, Office of Admissions, and HR will be notified accordingly. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the College. The records retained by the Nondiscrimination Coordinator will reflect that status. All Defiance College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

18. Appeals

The Nondiscrimination Coordinator will designate an Appeal Decision-maker from the Resolution Process Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Administrative Resolution Process for the matter. The Nondiscrimination Coordinator will designate a voting chair if a panel is used.

A. Appeal Grounds

Appeals are limited to the following grounds:

1) A procedural irregularity affected the outcome of the matter

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2) There is new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter
3) The Nondiscrimination Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

B. Appeal Request

Any party may submit a written appeal request to the Nondiscrimination Coordinator within three (3) business days of the delivery of the notice of outcome.

The appeal request will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the appeal grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the appeal request does not provide information that meets the grounds in the procedures, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the appeal request meets the grounds in the Procedures, then the Appeal Decision-maker will notify all Parties and their Advisors, the Nondiscrimination Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors, the Nondiscrimination Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the appeal request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that appeal request will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in the Procedures and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Nondiscrimination Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within three (3) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified in writing.

No party may submit any new appeal request after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

C. Appeal Determination Process

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal

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grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard of evidence.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction(s).

The Appeal Decision-maker may consult with the Nondiscrimination Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Nondiscrimination Coordinator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Nondiscrimination Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new Resolution Process Pool members serving in the Investigator and Decision-maker roles.

A notice of appeal outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the College is permitted to share according to federal or state law, and the rationale supporting the essential Findings to the extent the College is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official institutional records, or emailed to the Parties' College-issued email or other approved account. Once emailed and/or received in person, the appeal outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

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E. Sanction Status During the Appeal

Any sanctions imposed as a result of the Final Determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the interim suspension procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within two (2) business days of implementation.

19. Long-Term Remedies/Actions

Following the conclusion of the Administrative Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Nondiscrimination Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the College community that are intended to stop the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct, remedy the effects, and prevent its recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the Nondiscrimination Coordinator's discretion, the Parties may be provided certain long-term support or measures even if no Policy violation is found.

When no Policy violation is found, the Nondiscrimination Coordinator will address any remedies the College owes the Respondent to ensure no effective denial of educational access.

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

20. Failure to Comply with Sanctions and/or Responsive Actions

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All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College.

Supervisors are expected to enforce completion of sanctions/responsive actions for their Employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Nondiscrimination Coordinator's satisfaction.

21. Recordkeeping

In implementing the Policy and Procedures, the Nondiscrimination Coordinator will maintain records of all allegations, investigations, and Resolutions, indefinitely, or as required by federal or state law or institutional policy.

22. Statement of the Rights of the Parties (See Appendix E)

23. Disability Accommodations

Defiance College is committed to providing reasonable accommodations and support to qualified Students, Employees, or others with disabilities to ensure equal access to the College's Resolution Process.

Anyone needing such accommodations or support should contact the Nondiscrimination Coordinator, who will work with the Accessibility Services as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

24. Other Support

The College will address other reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

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APPENDIX E: STATEMENT OF THE PARTIES' RIGHTS

Under the Policy and Procedures, the Parties have the right to:

- An equitable investigation and Resolution of all credible allegations of prohibited Discrimination, Harassment, Retaliation, and Other Prohibited Conduct, when reported in good faith to College officials
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional reports or Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations
- Be informed in advance of any College public release of information regarding the allegation(s) or underlying incident(s), whenever possible
- Have all personally identifiable information protected from the College's release to the public without consent, except to the extent permitted by law
- Be treated with respect by College officials
- Have College Policy and Procedures followed without material deviation.
- Voluntarily agree to resolve allegations under the Policy through Informal Resolution without College pressure, if Informal Resolution is approved by the Nondiscrimination Coordinator
- Not be discouraged by College officials from reporting Discrimination, Harassment, Retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) for the College to assist in notifying such authorities, if the party chooses. This also includes the right not to be pressured to report
- Have College Campus Safety and/or other College officials respond promptly to alleged Policy violations
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on campus and in the community
- A College-implemented no-contact 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
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No report or Formal Complaint, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
    - Relocating a residential 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/workspace relocation)

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    - Transportation assistance
    - Arranging to dissolve a housing contract and provide a pro-rated refund
    - Rescheduling or adjusting an exam, paper, and/or assignment
    - Receiving 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
- Have the College maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures or comply with the law
- Receive sufficiently advanced written notice of any College meetings or interviews involving another party, when possible
- Identify and have the Investigator(s), Advisors, and/or Decision-maker question relevant available witnesses, including expert witnesses
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness
- Have Complainant's inadmissible sexual predisposition/prior sexual history or any party's irrelevant character evidence excluded by the Decision-maker
- Review the Relevant and Directly Related Evidence (if applicable) obtained and respond to that evidence
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record
- Receive a copy of all Relevant and Directly Related Evidence (if applicable) obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10) business day period to review and comment on the evidence
- Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to a hearing
- Be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant
- Regular status updates on the investigation and/or resolution process
- Have reports of alleged Policy violations addressed by Resolution Process Pool members, or others, who have received relevant annual training as required
- Preservation of confidentiality/privacy, to the extent possible and permitted by law
- Meetings, interviews, and/or hearings that are closed to the public
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or a conflict of interest
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process
- Apply the appropriate standard of evidence, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all Relevant Evidence.

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- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing
- Have an impact and/or mitigation statement considered by the Decision-maker following a Final Determination of responsibility for any allegation, but prior to sanctioning
- Be promptly informed of the resolution process Finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay)
- Be informed in writing of when a College decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery
- Be informed of the opportunity to appeal the Finding(s) and sanction(s) and the procedures for doing so in accordance with the College's appeal grounds
- A fundamentally fair resolution as defined in the Procedures

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APPENDIX F: PRIVACY AND CONFIDENTIALITY

For the purpose of the Policy, privacy and confidentiality have distinct meanings.

Privacy means that information related to Notice or a Formal Complaint will be shared with a limited number of College Employees who "need to know" in order to assist in the assessment, investigation, and resolution of the Formal Complaint. All Employees who are involved in the College's response to Notice under the 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 Student Records Policy. The privacy of Employee records will be protected in accordance with Human Resources policies.

Confidentiality exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who can have privileged communications as Confidential Resources. See Section 6 of the Policy for more information about Confidential Resources.

When information is shared by a Complainant 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: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

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APPENDIX G: RELATIONSHIPS BETWEEN STUDENTS AND EMPLOYEES POLICY

Expectations Regarding Relationships Between Students and Employees

Defiance College is committed to maintaining learning and work environments free from conflicts of interest, exploitation, and favoritism and expects high ethical and professional standards with regard to employee interactions and relationships with students. Regardless of position or contact, an employee's professional responsibilities make it possible for that employee to influence the status or circumstances of any student. As a matter of sound judgment and professional ethics, all employees have a responsibility to avoid any apparent or actual conflict between their professional responsibilities and personal relationships with students.

Romantic, amorous, sexual, and dating relationships between employees and students, even when consensual, involve inherent risk of perceived or actual conflicts of interest, favoritism, and exploitation. They are problematic because of the unequal status of the parties and the real or perceived conflict of interest, particularly when the employee has supervisory, instructional, or other professional responsibility over the student. This imbalance makes it difficult or impossible for the student to genuinely consent to entering into an amorous or sexual relationship and may impede the real or perceived freedom of the student to terminate or alter the relationship.

Therefore, Defiance College prohibits all employees from entering into relationships with students that are romantic, amorous, sexual, or dating in nature. In some instances, exceptions to prohibited relationships may exist or be created. This prohibition will not apply when a pre-existing relationship exists. A pre-existing relationship is a relationship between an employee and a Defiance College student that existed (a) before the student enrolled at Defiance College or (b) before the employee became employed by Defiance College. Employees must promptly disclose a pre-existing relationship to the Office of Human Resources so that a plan can be developed to circumvent any conflicts of interest and address any perceptions of bias or favoritism by others.

Violation of this policy may result in a range of remedial and disciplinary actions, up to and including termination of employment.

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APPENDIX H: POOL MEMBER TRAINING

Resolution Process Pool members receive annual training related to their respective roles. This training may include, but is not limited to:

- The scope of the College's Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy
- The College's Formal Grievance Process
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Disparate treatment
- 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, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of Sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct violations
- Recordkeeping

The materials used to train all members of the Resolution Process Pool do not rely on sex stereotypes and are publicly posted here.

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APPENDIX I: RECORD MAINTENANCE AND ACCESS POLICY

Policy Scope:
This policy covers records maintained in any medium that are created pursuant to the College's Discrimination, Harassment and Other Prohibited Conduct Policy and/or the regular business of the College's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable state and/or federal law, including the Title IX regulations, FERPA, and/or the Clery Act/VAWA § 304. The Title IX Office controls the dissemination and sharing of any records under its control.

Types of Records Covered Under this Policy:
Records Pertaining to the Resolution Process. These records include, but are not limited to:

- Documentation of notice to the institution including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation
- Documentation related to the Resolution Process
- The final investigation report
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal resolution records
- Notices of Outcome
- Records documenting that the College's response was not deliberately indifferent
- Any other records typically maintained by the College as part of the case file

Specific examples of records pertaining to the Resolution Process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to the processing of an investigation; correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove the Respondent; correspondence with the parties; medical, mental health, medical, and forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the Resolution Process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

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Drafts and Working Files:
Preliminary drafts and "working files" are not considered records that must be maintained by the College, and these are typically destroyed during the course of an investigation or at its conclusion. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a "working file" would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

Attorney Work-Product:
Communications from the Title IX Office or its designees with the College's legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

Record Storage:
Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in database, digital and/or paper format. The complete file must be transferred to the Title IX Office within fourteen (14) business days of resolution of the complaint (including any appeal), if the file is not already maintained within the Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the parties. Parallel records should be maintained in the Office of Student Conduct and/or Human Resources, respectively and should be maintained in accordance with the security protocols of those offices. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Title IX Office [and in a separate aggregate annual Clery Act composite file, as well].

Record Retention:
All records created and maintained pursuant to the Discrimination, Harassment and Other Prohibited Conduct Policy will be retained by the NonDiscrimination Coordinator for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the NonDiscrimination Coordinatormay authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

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Record Access:
Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion or via permission levels within the database. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant College policies and procedures.

Student parties may request access to their case file. The College will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of the recipient in the process (Complainant, Respondent, Hearing Decision-maker; Complainant's Advisor, etc.).

Record Security:
The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the Title IX Office, designated secure storage area. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the case file.

APPENDIX J: INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE DEFINITION

> "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non- Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

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