

MOREHOUSE COLLEGE

SEXUAL MISCONDUCT PROCEDURES

**PROCESS FOR RESOLVING SEXUAL
MISCONDUCT COMPLAINTS INVOLVING
STUDENTS, STAFF, EMPLOYEES, AND
THIRD PARTIES**

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**Submitted by the
Office of Title IX, Ethics & Compliance**

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Introduction – Section 1

This process describes how Morehouse will investigate a Complaint of sexual misconduct for community members, including students, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, who are conducting business, studying, living, visiting, or having any official capacity with the College or on its property, as defined in this the Sexual Misconduct Policy, and determine what, if any, Supportive Measures and/or disciplinary sanctions are appropriate. The Sexual Misconduct Policy, including all definitions and the policy language, is expressly incorporated herein. The Complainant and Respondent will be referred to collectively as the “Parties,” and will receive equitable treatment.

The Respondent is presumed not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

All investigations will be conducted in a timely and impartial manner. The Parties will be informed of the projected timeline for the conclusion of the process. There may be temporary delays in the process and limited extensions of the time frame for a good cause. The Parties will be provided written notice of any such delays long with the reasons therefore.

This Policy applies to prohibited conduct that occurs on-college premises and at College-sponsored educational programs or activities. The Title IX Coordinator, in limited discretion and on a case-by-case basis, may refer conduct occurring off-campus and outside of the Title IX jurisdiction to other relevant proceedings, e.g., student code of conduct, faculty or staff grievance processes.

The College may dismiss the Formal Complaint or any allegations therein; if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint or any allegations; the Respondent is no longer enrolled or employed by the College, or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon the mandatory or discretionary dismissal of the Formal Complaint, the College will promptly send written notice of the dismissal, and the reasons therefore, simultaneously to each Party.

The College may remove a student respondent from the College’s Education Program or Activity on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

The College may place an employee Respondent on administrative leave during the pendency of a grievance process. The decision to place an employee on administrative leave with pay

(or benefits) or without pay (or benefits) is final and may not be challenged. This does not apply to student employees.

The College may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, where the allegations of sexual harassment arise out of the same facts or circumstances. The burden of gathering evidence sufficient to determine responsibility rests on the College and not on the Parties.

This set of procedures may be periodically updated, and published through usual means.

Intake and Initial Fact-Gathering – Section 2

Initial Steps: After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator or designee will take several initial steps. These initial steps will enable the College to assess the needs, safety, and health of the Complainant, and the community at large, and determine the appropriate next steps to take regarding the reported conduct, and offering of Supportive Measures.

These initial steps may include, but are not limited to, the following: Upon receipt of a Complaint, in person, by telephone, in writing, or by email, the Title IX Coordinator will contact the Complainant and encourage him or her to meet to complete an intake process; and to discuss the nature and circumstances of the reported conduct, review available relevant documentation, and address his or her immediate physical safety, and emotional needs, including the need for any Supportive Measures.

In collaboration with Morehouse College Police Department, the Title IX Coordinator will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community that could warrant the issuance of a Timely Warning (by the Morehouse College Police Department), a criminal trespass warning for any persons, or any other interim protections, i.e., an Emergency Removal.

Timely Warnings:

Federal regulations associated with the Jeanne Clery Act require every college to provide “Timely Warnings” to their campus community after certain designated employees and/or the police receive reports of specified crimes that appear to pose a serious or continuous threat to the campus community. The purpose of issuing a timely warning is to alert the campus community to the occurrence of a crime, heightening safety awareness of students and employees in a manner that will aid in the prevention of similar crimes (34 CFR Ch VI § 668.46 (e)). Morehouse usually issues its Timely Warnings in the form of “Crime Alerts.”

Deputy Title IX Coordinator or Designee: Where the Title IX Coordinator is listed as the designated point of contact for violations of the Sexual Misconduct Policy, the Deputy Title IX Coordinator may assume the role, as necessary and appropriate.

Coordinator may assume the role, as necessary and appropriate.

During the intake meeting with the Complainant the Title IX Coordinator will address the following topics, as appropriate:

- a. Offering Supportive Measures;
- b. Explain the Informal Resolution process, if applicable;
- c. Explain the Formal Grievance Process, including investigations and live hearings;
- d. Explain that a report to law enforcement will not change the College's obligation to investigate the matter potentially, but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct;
- e. Explain the right to report (or decline to report) the matter to Campus Police and/or to local law enforcement, and the College's ability to assist with such reporting if the Complainant so chooses to accept that assistance;
- f. Explain the available resources for seeking medical treatment, counseling, spiritual guidance, or other Supportive Measures;
- g. Explain the right to have an Advisor of the Complainant's choosing, to accompany the Complainant to related meeting and interviews, and to conduct a cross-examination of the relevant parties at a live hearing.
- h. Explain the consequences of any Party knowingly making and/or submitting false statements;
- i. Explain Morehouse's alcohol and drug amnesty policy;
- j. Explain the right to inspect and review any/all witness statements;
- k. Explain considerations for accessing of medical records and the process for disclosing said records to the College;
- l. Explain that Retaliation is prohibited.

Dismissal (Mandatory and Discretionary): The College **must dismiss** a Formal Complaint or any particular allegation therein if, at any time prior to reaching of a resolution, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined by Title IX, even if proved;
- 2) The conduct did not occur in an Educational Program or Activity controlled by the College (including buildings or property controlled by recognized student organizations);
- 3) The conduct did not occur against a person in the United States; and/or

- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Education Program or Activity of the College

The College **may dismiss** a Formal Complaint, or any particular allegations therein, if, at any time prior to the reaching of a resolution:

- 1) A Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint, or any of the particular allegations therein;
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or any particular allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal, and the rationale for that dismissal, simultaneously to both Parties.

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

Within **two (2) business days** of receiving notice of the dismissal, either Party submitting an appeal must set forth, in writing, in detail, the grounds for review, and attach all material that he/she wishes to have considered in the appellate process. The decision by the Appellate Office is final. A Complainant who decides to withdraw a Complaint may later request to reinstate it or refile it.

Written Notice of Allegations of Sexual Harassment: After receiving the Formal Complaint and meeting with the Complainant, the College will provide written notice of the allegations of sexual harassment, including sufficient details known at the time, to both parties, in sufficient time to allow the Parties to prepare for any subsequent interviews and meetings. The Respondent is presumed not responsible for the alleged conduct, and any determination regarding responsibility is made at the conclusion of the process.

During the intake meeting with the Respondent, the Title IX Coordinator will address the following topics, as appropriate:

- a. Offering Supportive Measures;
- b. Explain the Informal Resolution process, if applicable;
- c. Explain the Formal Grievance Process, including an investigations and live hearings;
- d. Explain that a report to law enforcement will not change the College's obligation to investigate the matter potentially, but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct;
- e. Explain the right to report (or decline to report) the matter to Campus Police

and/or to local law enforcement, and the College ability to assist with such reporting;

- f. Explain the available resources for seeking medical treatment, counseling, spiritual guidance, or other Supportive Measures;
- g. Explain the right to have an Advisor of the Respondent/s choosing, to accompany the Respondent to related meetings and interviews, and to conduct a cross-examination of the relevant parties at a live hearing.
- h. Explain the consequences of any Party knowingly making and/or submitting false statements;
- i. Explain Morehouse's alcohol and drug amnesty policy;
- j. Explain the right to inspect and review any/all witness statements;
- k. Explain considerations for accessing medical records, and the process for disclosing said records to the College;
- l. Explain that Retaliation is prohibited.

Advisor of Choice:

The College provides the Parties with the same opportunity to have a single Advisor of his/her choice present during any grievance proceeding, including the opportunity to be accompanied by such Advisor to any related meeting or proceeding. A Party's chosen Advisor may be the Party's legal counsel, but nothing under this Section shall be construed to create an obligation on the part of the College or the Title IX Coordinator to provide either Party with legal counsel.

An Advisor is a person chosen by a Party, or appointed by the institution, to accompany the Party to meetings related to the resolution process, to advise the Party on that process, and to conduct cross-examination on behalf of that Party at a Live Hearing.

An Advisor may only participate in a "Live Hearing's" cross-examination of the opposing Party, of witnesses and objecting to the other Party's questions. At the Live Hearing, the Panel Chair will permit each Party's Advisor to ask the other Party, and any witnesses, all relevant questions and follow-up questions, including those challenging credibility. During other parts of the "Live Hearing," the Advisor may not speak on the part of the individual he or she is advising.

An Advisor is subject to the same confidentiality expectations applicable to Parties. Accommodations, including the scheduling and rescheduling of interviews or hearings, will not be made for any Advisors who unduly delay the process. The College expects that all participants, including Parties and Advisors, participate respectfully and non-abusively during a hearing. The Advisor may not interrupt or interfere with the proceedings, and, to the extent that they do, Morehouse retains the right to stop the process, and remove and replace the Advisor.

Disclosure of Records:

The College cannot access, consider, disclose, to otherwise use a Party's records that are

made or maintained by a physician, psychiatrist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to Party, unless the College obtains that Party's voluntary, written Consent to this evidence.

Informal Resolution – Section 3

If the Title IX Coordinator determines that it is appropriate, the Parties may choose to resolve the Complaint through the Informal Resolution process. Information Resolution must be mutually agreed upon, in writing, by both Parties. Additionally, an Information Resolution process cannot begin unless and until a written Formal Complaint is filed. The Informal Resolution process may recommend the following types of outcomes, where appropriate:

- 1) facilitating an agreement between the Parties;
- 2) separating the Parties;
- 3) referring one or both Parties to counseling, or to targeted educational, and/or
- 4) training programs.

To proceed with Informal Resolution, the College must provide the Parties with a written notice disclosing the allegations, as well as, the requirements of the Informal Resolution process. No Party can be required as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment or any other right, to waive their right to an investigation and adjudication of a Formal Complaint under the Formal Grievance process.

If the Parties involved in the Informal Resolution process fail to reach a mutually agreeable resolution, the allegation will be resolved via the Formal Resolution process. In that event, the Title IX Coordinator will so notify the Parties in writing and will describe the next steps and timeframes for the Formal Resolution.

Agreements reached via the Informal Resolution process shall be final following **three (3) business days** of the date of the agreed resolution. They cannot be appealed absent the discovery of new and material information; in which case a new investigation may be initiated.

Any Party may terminate the Informal Resolution process at any time. The Informal Resolution facilitator(s) may not serve as witness(es) in subsequent formal grievance processes. Additionally, the Informal Resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

Formal Resolution and Investigation – Section 4

If the Title IX Coordinator determines that the Complainant's report must be processed through the Formal Grievance process, then a Notice of Investigation is issued to both Parties.

Notice of Investigation: If the Formal Grievance process is to be followed, the Title IX Coordinator will prepare a written notice to the Complainant and Respondent that will

include a brief description of the allegations, the portions of the Sexual Misconduct Policy that are alleged to have been violated, statement that the Respondent is presumed not responsible unless and until a resolution is reached at the end of the process; and a statement informing the Parties that they have the right to an Advisor of their choice, have right to inspect and review evidence, and have a right to receive an offering of Supportive Measures. This written notice does not constitute a finding or a determination of responsibility.

Designation of Investigator: The Title IX Coordinator will designate at least one internal or external investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare an initial and final reports of investigative findings (the “Investigative Report”).

At the College’s discretion, more than one investigator may be assigned. The College may also exercise discretion in assigning an external investigator to conduct the investigation with the College’s internal investigator. In addition, the College may assign an external investigator, without assigning an internal investigator.

- 1) All investigators – internal or external – will be selected from a group of qualified and trained individuals employed by the College or engaged by the College for the purpose of conducting investigations under the Sexual Misconduct Policy. The Title IX Coordinator will provide the Parties with the name(s) of the person(s) assigned to investigate the reported conduct (the “Investigator(s)”).
- 2) As soon as possible, but no later than **three (3) business days** after receiving notice of the identity of the Investigator(s), Parties should inform the Title IX Coordinator in writing of any conflicts or potential conflicts of interest with regards to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine whether a different individual(s) should be assigned as the Investigator(s). The Title IX Coordinator’s decision regarding any conflicts is final.

Nature of the Investigation: The investigation will include separate interviews with the Complainant, the Respondent, and any witnesses. The investigation may consist of the review of documentation or related other pertinent pieces of evidence. The Investigator(s) will provide the Parties with written notice of any/all meetings at which their presence is required at least three (3) days in advance of the interview.

The Parties’ Identification of Potential Witnesses and Documentation: The Parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak, as well as any documentation or other items they would like to be considered.

Investigation Prohibitions: Neither Party will be permitted to question or cross-examine the other Party during the investigation phase. Moreover, the Investigator(s) generally will not consider information related to either Party’s sexual history outside of the conduct in question.

Cooperation with Investigation:

All Parties are encouraged to cooperate with the investigation and provide all relevant and requested information to the assigned Investigator(s).

Preliminary Investigative Report – Section 5

Content of the Preliminary Investigative Report: Prior to the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include factual information presented during the Investigation Phase, an analysis, relevant consistencies or inconsistencies (if any) between different sources of information, and if necessary, a separate section describing the Investigator(s)' perception of the demeanor of the individuals interviewed.

- 1) The factual information "evidence" will include both inculpatory and exculpatory evidence.
- 2) The Investigative Report will not include a determination by the Investigator(s) as to whether the Respondent has violated the Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Hearing Panel, as described below.

Inspection and Review by the Parties and Advisors: The College will send to each Party and Advisor, if any, the Initial Investigative Report, including any/all evidence for inspection and review. The Parties may submit written comments regarding this Investigative Report's content to the Title IX Coordinator within **ten (10) business days** of the date which the report was sent.

This review of the Report by Parties and their Advisor will occur in a secure electronic format.

- 1) The comments submitted by the Parties may not exceed ten (10) double spaced pages.
- 2) The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in his or her sole discretion, that the additional time is warranted, upon a written request by the Party seeking the extension that explains the reasons that the additional time is necessary.
- 3) After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine either that additional investigation is required, or that no such further investigation is needed. If further investigation is conducted, the Investigator(s) will include any other relevant information in his or her final Investigative Report.

The final Investigative Report will then be submitted to the Title IX Coordinator. Any submissions made by either Party pursuant to this section and any other documentation deemed relevant by the Investigator(s) will be attached to the Investigative Report. The Title

IX Coordinator will simultaneously submit the final Investigative Report to the Parties after all documents have been reviewed and confirmed as to be complete.

Notice of Hearing and Determination Panel – Section 6

The Title IX Coordinator will convene a four (4) member Determination Panel (the “Panel”). The role of the Panel chair, who may not assist in the determination of whether a Respondent is responsible or not responsible, will be to facilitate the process, govern the procedural flow, and to notify both Parties’ Advisors whether questions sought to be posed to witnesses or the opposing party are relevant or during the Live Hearing. The other members of the Panel will be selected from a previously established pool of College community members trained to decide sexual misconduct cases. This pool shall not include students. The hearing will be recorded.

The Title IX Coordinator will provide the Parties with a written Notice of Hearing no less than **ten (10) business days** prior to the hearing. The Notice of Hearing will include the following:

- 1) A description of the alleged violation(s), a list of all policies allegedly violated a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- 2) The time, date, and location of the hearing.
- 3) A description of any technology to be used to facilitate the hearing.
- 4) Information about the option for the Live Hearing to occur with the Parties located in separate rooms, using technology, which will enable the Decision-maker(s) and Parties to see and hear the Parties and witness(es) as they answer questions. Such a request must be made to the Title IX Coordinator, in writing, at least **five (5) business days** prior to the hearing.
- 5) A request for a list of witness(es) who will attend the hearing, along with a written invitation to object to any of the Panel members on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least **two (2) business days** prior to the hearing.
- 6) Information on how the hearing will be recorded, and how the Parties may access to the recording once the hearing has concluded.
- 7) A statement that, if any Party or witness fails to appear for the scheduled hearing, the hearing may be held in their absence. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.
- 8) Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any cross-examination questions that they may desire to ask. The Party must notify the Title IX Coordinator,

in writing, if they do not have an Advisor, and the College will appoint prior to the hearing. If an Advisor does not attend the hearing, the party cannot cross-examine the other party or any witness(es) him or herself. There are no exceptions.

- 9) An invitation to each Party to submit an impact statement at the Live Hearing that the Panel will review during any sanction determination.
- 10) A request to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least **seven (7) business days** prior to the hearing.
- 11) Parties will not be allowed to bring mobile phones/devices into the Live Hearing.
- 12) Hearings for alleged violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and may be held immediately after the end of the term or during the summer.

Live Hearing and Determination by the Panel: At the Live Hearing, the Panel will decide whether or not the Responding Party is responsible for violating the Sexual Misconduct Policy by having engaged in some or all of the reported conduct and will recommend appropriate sanction(s), if any.

- 1) The hearing may be conducted with Parties physically present in the same geographic location or, at the College's discretion, any or all Parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously see and hear one another.
- 2) If a Party does not have an Advisor present at the Live Hearing, the College must provide without fee or charge to that Party, an Advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.
- 3) At the Live Hearing, the Panel must permit each Party's Advisor to ask the other Party and witnesses any relevant questions and follow-up questions, including those challenging credibility.
- 4) Before a Complainant, Respondent, or witness answers a cross-examination, the Chair of the Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 5) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- 6) Questions and evidence about the Complainant's sexual predisposition or prior sexual

behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, and are offered to prove Consent.

- 7) The College expects that all participants, including Parties and Advisors, will participate respectfully and non-abusively during a hearing. The Advisor may not interrupt or interfere with the proceedings. If an Advisor's conduct causes, in the Hearing Chair's discretion, interference, delay or interruption of the proceedings, the Hearing chair may remove that Advisor from such proceedings, if deemed necessary.

Standard of Proof: All findings and determinations of responsibility under the Sexual Misconduct Policy will be made using a **preponderance of the evidence standard**. This standard requires determining whether it is more likely than not that a fact exists or that a violation of the Sexual Misconduct Policy occurred.

The preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions. A determination of responsibility under the Sexual Misconduct Policy does not equate with a finding of a violation of criminal laws.

Sanctions – Section 7

The Panel will determine the appropriate sanction. The Panel's determination will be in writing and shared with the Parties by the Title IX Coordinator.

Scope of Sanctions: The sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact orders, restriction from extracurricular programs or activities, loss of leadership opportunities or positions in activities, housing restriction/relocation, and/or restriction from College employment.

Sanctioning Determination: In determining an appropriate sanction, the Panel may take into account:

- 1) The nature and circumstances of the misconduct;
- 2) The impact of the misconduct on the Complainant;
- 3) The impact of the misconduct on the College community;
- 4) The disciplinary history of the Party deemed responsible;
- 5) Any other mitigating or aggravating circumstances used to reach a fair, equitable, and appropriate resolution in each case;
- 6) A statement by a Student Conduct or Human Resources representative, called before the Panel, to appear before it and to address the Panel regarding sanctions.

Additional Remedies: The Panel may also identify other Remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any supportive or safety measures. Remedies must be designed to restore or preserve equal access to the recipient’s Education Program or Activity. Such Remedies may include the same individualized services described as “Supportive Measures”; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Notification of Outcome – Section 8

The Notification of Outcome shall be issued to the Complainant and the Respondent concurrently and shall contain the following:

- 1) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether the College will provide Remedies designed to restore or preserve equal access to the College’s Education Program or Activity to the Complainant.
- 2) A description of procedural steps taken through-out the grievance process, including but not limited to, notifications to Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and a summary of hearings held.
- 3) The Title IX Coordinator will inform the Parties simultaneously and in writing of (1) the outcome of the disciplinary proceeding; and (2) the procedures for either Party to appeal the result of the disciplinary proceeding.

The Title IX Coordinator will also inform other College officials with a legitimate educational interest about the outcome of the hearing. Notice to these other individuals will be accompanied by a request that the information remain confidential except in situations in which disclosure is necessary to protect the community’s safety.

Appeal of Decision – Section 9

Within four (4) business days of receiving notice of the Panel’s determination on responsibility and sanctions, either Party may appeal the decision by submitting a written letter of appeal to the Appellate Officer stating why the Party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate. A Party may only appeal on the following grounds:

- 1) A procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal could affect the outcome of the matter; and
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The Party submitting the appeal must set forth, in writing, in detail, the grounds for the requested review, and attach all materials that he/she wishes to have considered in the appeals process. The Appellate Officer will provide a copy of the appeal submitted by one Party to the other Party.

Committee Membership: The Title IX Coordinator will convene a three (3) member appeals Panel from a previously established pool of College community members trained to decide sexual misconduct cases. The Vice President for Student Services (or designee) will serve as the chair of the Panel for matters in which the Respondent is a student. The Executive Vice President of Financial Affairs (or designee) will serve as the chair of the Panel for matters in which the Respondent is an employee. The Appellate Panel will decide the merits of any appeal and, in so doing, may consult with the Investigator(s), the Hearing Panel/Officer, and any other individual whom the Appellate Panel deems appropriate.

Governing Principles: The Appellate Panel may affirm all, part or none of the Hearing Panel's determinations, including the sanction. When the Appeal Panel finds that at least one of the aforementioned bases for appeal has been met, additional principles governing the review of appeals may include the following:

- 1) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- 2) Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- 3) An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Hearing Panel merely because they disagree with the finding and/or sanction(s).
- 4) The Appeal Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- 5) Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Panel for reconsideration. Other appeals may be remanded at the discretion of the Appellate Officer.
- 6) Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- 7) In rare cases where a procedural error cannot be cured by the original Hearing Panel (as in cases of bias), the Appeal Panel may order a new hearing before a new Hearing Panel.
- 8) The results of a remand to an Appeal Panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- 9) In cases in which the appeal results in a Respondent's reinstatement to the College or the resumption of previously suspended or revoked privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some

opportunities lost may be irreparable in the short term.

Sanctions of all types may not be imposed, in full or in part, while an appeal is pending. The Chair of the Appeal's Panel will render a decision in no more than **seven (7) business days** from the Notice of Appeal, barring exigent circumstances. The Appellate Officer's decision will be in writing and is final. The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

Revision of this Policy and Procedures – Section 10

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or Retaliation and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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

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

This Policy and procedures are effective **August 14, 2020**.