



MOREHOUSE
COLLEGE

MOREHOUSE COLLEGE

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

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Office of Title IX, Ethics & Compliance

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Section 1 – Introduction

This process describes how Morehouse will investigate a Complaint of Prohibited Conduct as defined in the College’s Sexual and Interpersonal Misconduct Policy (“Policy”) involving 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, and determine what, if any, Supportive Measures and/or disciplinary sanctions are appropriate. The 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 of 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 along with the reasons therefore.

The College may remove a 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. More detail about emergency removals is provided in the Policy.

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. More detail about administrative leaves is provided in the Policy.

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 Prohibited Conduct 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.

Section 2 – Intake and Initial Steps in Title IX Sexual Harassment and Non-Title IX Misconduct Matters

Initial Steps: After receiving a report of conduct that could fall under the 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 e-mail, 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 and/or a threat assessment and management team as deemed appropriate, 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, e.g., an Emergency Removal.

The Title IX Coordinator may at any time determine in light of the reported allegations of a matter and/or other information that a matter should be addressed by another officer or office of the College (for example, by human resources or student conduct). If so, the Title IX Coordinator will dismiss the matter for Title IX purposes as provided above and/or otherwise refer the matter accordingly.

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 Chapter 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.

During the intake meeting with the Complainant the Title IX Coordinator will address topics such as the following, 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 (including the hearing procedures that will be applied in Title IX Sexual Harassment matters versus Non-Title IX Misconduct matters, as described below);

- d. Explain that a report to law enforcement will not change the College's obligation to investigate the matter at an appropriate time, 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, in Title IX Sexual Harassment cases (but not Non-Title IX Misconduct cases) to conduct cross-examination of the other Party and witnesses 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 other rights and options available to the Complainant;
- m. Explain that Retaliation is prohibited.

Dismissal (Mandatory and Discretionary): U.S. Department of Education Title IX regulations issued in May 2020 ("May 2020 Title IX Regulations") mandate that the College must dismiss a Formal Complaint or any particular allegation therein if, at any time prior to the reaching of a resolution, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in the Policy and the May 2020 Title IX Regulations, even if proved;
- 2) The conduct alleged did not occur in an Education Program or Activity as defined in the Policy;
- 3) The conduct alleged 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 an 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 College; or
- 3) Specific circumstances prevent the College 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.

A dismissal decision is appealable by either party. 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. A Party may only appeal a dismissal on the following grounds:

- 1) A procedural irregularity occurred that affected the Title IX Coordinator's dismissal decision;
- 2) There is new evidence that was not reasonably available at the time of the determination regarding dismissal that could affect the Title IX Coordinator's dismissal decision; and/or
- 3) The Title IX Coordinator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the Title IX Coordinator's dismissal decision.

Appeals of dismissal decisions must be submitted to the College's Senior Vice President and Chief Administrative Officer, who will serve as the College's Appellate Officer with respect to dismissal decisions. The decision of the Appellate Officer is final.

A Complainant who decides to withdraw a Complaint may later request to reinstate it or refile it. If some of the conduct alleged in a Formal Complaint falls within the Policy's definition of Title IX Sexual Harassment and some of the conduct alleged falls within the Policy's definition of Non-Title IX Misconduct, the College will, absent extraordinary circumstances as determined by the Title IX Coordinator, address all of the allegations through the Title IX Sexual Harassment Procedures, as described below.

If a Formal Complaint is dismissed for Title IX purposes but the allegations of the Complaint fall within the definition of Non-Title IX Misconduct stated in the Policy or misconduct prohibited by other College policies, the Title IX Coordinator will transfer the Complaint for handling under appropriate procedures, which may include but are not limited to the Non-Title IX Misconduct Procedures outlined below (in cases involving alleged Non-Title IX Sexual Assault, Domestic Violence, Dating Violence or Stalking) or faculty or staff procedures administered by other College offices (in cases involving alleged Non-Title IX Sexual Harassment but not Non-Title IX Sexual Assault, Domestic Violence, Dating Violence or Stalking), as deemed appropriate by the Title IX Coordinator and/or other College officials. Investigation and resolution of a matter that does not fall within the definition of Title IX Sexual Harassment or Non-Title IX Misconduct may be pursued, dismissed altogether, or transferred to another College process, as deemed appropriate in the College's discretion and/or as appropriate under applicable law.

Fundamental Principles of Sexual and Interpersonal Misconduct Procedures: The College's procedures for handling Title IX Sexual Harassment and Non-Title IX Misconduct will be prompt, fair and impartial from the initial investigation to the final result, in that they will be:

- Completed within reasonably prompt time frames as designated in the College's policies, which time frames may be extended for good cause and/or due to extenuating circumstances, with written notice to the Complainant and the Respondent of the delay and the reason for the delay;
- Conducted in a manner that is consistent with the College's policies and transparent to the Complainant and the Respondent, including timely notice of meetings at which the Complainant or Respondent may be present, and providing the Complainant, the Respondent, and appropriate College officials timely and equal access to any information that will be used during the College's process in accordance with the policies herein; and
- Conducted by officials who do not have a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent in a particular case. If either party is concerned that an official involved in an investigation or adjudication may be biased or have a conflict of interest, the party should share their concerns with the Title IX Coordinator immediately. If their concern is about the Title IX Coordinator, the party should contact the College's Senior Vice President and Chief Administrative Officer.

Written Notice of Allegations of Prohibited Conduct: After receiving the Formal Complaint and meeting with the Complainant, the College will provide written notice of the allegations of Prohibited Conduct that will include:

- Information about the College's formal and informal resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the

identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the College's presumption of good faith reporting and a summary of applicable College policies that prohibit knowingly making false statements or knowingly submitting false information to the College;
- Notification that parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
- Notification of existing counseling, health, and mental health services available on campus and/or in the community;
- Notification that taking any retaliatory action (directly or through others) against any person involved in the investigation is prohibited and will be considered a separate violation of College policy; and
- Notification that the Parties may inspect and review evidence at the final investigative report stage of the resolution process.

If in the course of an investigation the College decides to investigate allegations about any Party that are not included in the notice described above, it will provide notice of the additional allegations to the Parties whose identities are known.

Intake Meeting with Respondent: During the intake meeting with the Respondent, the Title IX Coordinator will address topics such as the following, 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 (including the hearing procedures that will be applied in Title IX Sexual Harassment matters versus Non-Title IX Misconduct matters, as described below);
- d. Explain that a report to law enforcement will not change the College's obligation to investigate the matter at an appropriate time, 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, in Title IX Sexual Harassment cases (but not Non-Title IX Misconduct cases) to conduct cross-examination of the other Party and witnesses 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 other rights and options available to the Respondent;
- m. Explain that Retaliation is prohibited.

Disclosure of Records: The College will not access, consider, disclose, or 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 do so.

Section 3 – Title IX Sexual Harassment Procedures

The College will apply the procedures outlined in this Section 3 in cases where the Title IX Coordinator determines, under the criteria specified above, that the allegations of a Formal Complaint signed by a Complainant or the Title IX Coordinator fall within the definition of Title IX Sexual Harassment stated above.

Advisors of Choice in Title IX Sexual Harassment Matters: In accordance with the May 2020 Title IX Regulations, the following special provisions apply to Advisors of choice in the context of Title IX Sexual Harassment matters (but not to Non-Title IX Misconduct matters). In Title IX Sexual Harassment matters, an Advisor is a person chosen by a Party 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 by posing relevant cross-examination questions to the other Party and witnesses on behalf of their advisee, and by objecting to the other Party's Advisor's questions. As detailed below, 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. Advisors must address their questions to the Chair first, and the Chair will determine whether they are relevant and should therefore be answered by the Party or witness. During other parts of the Live Hearing, the Advisor may not speak on behalf of the individual he or she is advising, or otherwise speak with anyone but their advisee.

The College expects that all participants, including Parties and Advisors, will participate respectfully and non-abusively during meetings and hearings. 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/or replace the Advisor, as appropriate.

If a Party does not have an Advisor available to attend a Live Hearing with the Party, the College will provide an Advisor for the limited purpose of posing relevant questions on the Party's behalf, as referenced above and below.

Informal Resolution of Title IX Sexual Harassment Matters: The Informal Resolution process in Title IX Sexual Harassment matters may involve 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; and/or
- 5) other resolution outcomes agreed to by the Parties and deemed appropriate by the College.

Parties may request even in the midst of a Formal Resolution process that a matter be resolved by Informal Resolution instead of Formal Resolution, so long as the Formal Resolution process has not yet proceeded to a hearing, and so long as both Parties and the Title IX Coordinator agree that the Informal Resolution process may be used.

If a Party to a matter that falls within the scope of the Title IX Sexual Harassment definitions in the Policy requests the initiation of an informal resolution process and the Title IX Coordinator agrees that the matter is appropriate for informal resolution, the College will provide to each Party a written notice that discloses:

- The allegations;
- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations –

- As noted below, the College generally permits Parties to withdraw from the informal resolution process and initiate or re-initiate a formal investigation and hearing process at any time before the informal resolution process is completed and any informal resolution is agreed to in writing by the Parties); and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

All Parties and the Title IX Coordinator must agree to informal resolution for this option to be used. The Title IX Coordinator will assess the request for informal resolution in light of factors such as, but not limited to, the severity of the alleged violation and the potential risks to campus community members posed by the reported misconduct, and will only suggest potential informal resolution procedures that the Title IX Coordinator deems potentially appropriate for use in a particular matter. The College will only proceed with an Informal Resolution process if both Parties provide their voluntary, written consent to having the matter resolved through the Informal Resolution process.

The matter will be deemed resolved if and when the Parties expressly agree in writing to an outcome that is acceptable to them and which is approved by the Title IX Coordinator (in consultation with other College administrators as deemed necessary). A Party may withdraw from the Informal Resolution process at any time prior to their execution of a written informal resolution agreement. After an informal resolution is agreed to in writing between the Parties, neither Party may initiate a Formal Resolution process regarding the same factual allegations.

At any time before a matter is resolved through Informal Resolution, the Title IX Coordinator may terminate an Informal Resolution process and initiate or re-initiate a Formal Resolution process at any time, as s/he deems appropriate in her/his discretion.

If the Parties involved in the Informal Resolution process do not reach a mutually agreeable resolution, the Complaint will be resolved via the Formal Resolution process if the Complainant and/or the Title IX Coordinator choose to proceed via Formal Resolution. In that event, the Title IX Coordinator will so notify the Parties in writing and will describe the next steps and timeframes for Formal Resolution.

In cases where informal resolution processes are not successful and a matter proceeds to Formal Resolution, individuals who act as facilitators of the informal resolution process may not be asked to testify at College hearings regarding statements made by Parties during the informal resolution process.

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.

Informal Resolution facilitator(s) may not serve as witness(es) in a subsequent Formal Resolution process.

The College will not offer to facilitate or use an Informal Resolution process in any matter that involves allegations that an employee engaged in Title IX Sexual Harassment of a student.

Formal Resolution and Investigation of Title IX Sexual Harassment Matters

Notice of Investigation and Allegations: If the Formal Resolution process is to be followed, the Title IX Coordinator will prepare a written notice to the Complainant and Respondent as described in the Written Notice of Allegations of Prohibited Conduct section above.

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 report of investigative findings (the “Investigative Report”).

At the College’s discretion, more than one investigator may be assigned. The College may also exercise discretion to assign 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 include the review of related documentation and/or other pertinent pieces of evidence. The Investigator(s) will provide the Parties with written notice of any and 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 will 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 with non-Parties 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 in Title IX Sexual Harassment Matters

Content of the Preliminary Investigative Report: Prior to the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which may 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, as deemed relevant by the Investigator(s).

- 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 Policy or what sanctions may be appropriate. Determinations regarding responsibility and any sanctions, if applicable, will be made by a Determination 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 and all evidence for inspection and review. The Parties may submit to the Title IX Coordinator written comments regarding the Investigative Report within ten (10) business days of the date on 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 why 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. At least 10 business days prior to a hearing as described in Section 6 below, the Title IX Coordinator will

simultaneously send to each Party and the Party's advisor, if any, the final investigative report in an electronic format or hard copy, for their review and written comment. Any written comments to the final report, which may not exceed ten (10) double-spaced pages, must be submitted to the Title IX Coordinator for inclusion with the other documents to be reviewed by the Determination Panel, within ten (10) business days of the date on which the report was sent.

Notice of Hearing and Determination Panel in Title IX Sexual Harassment Matters

The Title IX Coordinator will convene a three (3) member Determination Panel (the "Panel"). The role of the Panel chair will be to facilitate the process, govern the procedural flow, address and/or handle questioning-related issues as specified below, and participate in the Panel's determinations regarding responsibility and any sanctions. The other members of the Panel will be selected from a previously established pool of College community members trained to decide sexual and interpersonal misconduct cases. This pool shall not include students. The hearing will be recorded. Panel deliberations will not 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) The time, date, and location of the hearing.
- 2) A description of any technology to be used to facilitate the hearing.
- 3) 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. The Title IX Coordinator may decide to hold a Live Hearing using such technology or either Party or both Parties may request that the Live Hearing proceed in that manner. Such a request from a Party must be made to the Title IX Coordinator, in writing, at least five (5) business days prior to the hearing.
- 4) 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 five (5) business days prior to the hearing.
- 5) Information on how the hearing will be recorded, and how the Parties may access the recording once the hearing has concluded.
- 6) A statement that, if any Party or witness fails to appear for the scheduled hearing, the hearing may be held in their absence, but 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. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.

- 7) 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 to pose 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 one 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.
- 8) An invitation to each Party to submit an impact statement at the Live Hearing that the Panel will review during any sanction determination.
- 9) 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.
- 10) Notification that Parties will not be allowed to bring mobile phones/devices into the Live Hearing.

Hearings for alleged violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) may be held immediately after the end of the term or during the summer.

Live Hearing and Determination by the Panel in Title IX Sexual Harassment Matters

The following Live Hearing procedures apply to matters that involve allegations of Title IX Sexual Harassment as defined in the Policy and as required by the May 2020 Title IX Regulations, but do not apply to matters that involve only allegations of Non-Title IX Misconduct as defined in the Policy.

Based on the Final Investigative Report, the exhibits thereto, other appropriate information of record and the information provided at the Live Hearing, the Panel will decide whether or not the Respondent is responsible for committing Title IX Sexual Harassment by having engaged in some or all of the reported conduct and will recommend appropriate sanction(s), if any.

- 1) As noted above, 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 to see and hear one another.
- 2) As noted above, if a Party does not have an Advisor present at the Live Hearing, the College will 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) As noted above, at the Live Hearing, the Panel will permit each Party's Advisor to ask the other Party and witnesses any relevant questions and follow-up questions, including

those challenging credibility. Panel members may also ask relevant questions of Parties and witnesses.

- 4) As noted above, before a Complainant, Respondent, or witness answers a cross-examination question, the Chair of the Panel must first determine whether the question is relevant. Only questions deemed relevant will be posed to Parties and witnesses. A Party's Advisor may object briefly and in a respectful, non-disruptive manner to questions posed by the other Party's Advisor.
- 5) 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.
- 6) Again, the College expects that all participants, including Parties and Advisors, will participate respectfully and non-abusively during a hearing. Advisors may not interrupt or interfere with the proceedings. If an Advisor's conduct causes, in the Chair's discretion, interference, delay or interruption of the proceedings, the Chair may remove that Advisor from such proceedings and/or replace the Advisor, if deemed necessary.

Standard of Proof: All findings and determinations regarding responsibility under the 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 Policy occurred.

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

Section 4 – Non-Title IX Misconduct Procedures

The College will apply the procedures outlined in this section in cases where the Title IX Coordinator determines, under the criteria specified above, that the Complainant's allegations do not fall within the definition of Title IX Sexual Harassment stated above, but that they do fall within the definition of Non-Title IX Misconduct stated above, and that the allegations should be investigated and resolved under these procedures rather than procedures administered by another College official or office.

Advisors of Choice in Non-Title IX Misconduct Matters

Advisors of choice may attend meetings and hearings in Non-Title IX Misconduct matters with their advisee and may consult with their advisee privately in a non-disruptive manner during meetings and hearings, but they may not address investigators or decision-makers, question witnesses or the other Party, or otherwise speak or participate actively in meetings or hearings. The College expects that all participants, including Parties and Advisors, will participate respectfully and non-abusively during meetings and hearings. The Advisor may not interrupt or

interfere with meetings or hearings, and, to the extent that they do, Morehouse retains the right to stop the meeting or hearing and remove the Advisor, as appropriate.

Informal Resolution of Non-Title IX Misconduct Matters

Informal Resolution may be used in Non-Title IX Misconduct matters, whether or not a Formal Complaint has been filed by a Complainant or signed by the Title IX Coordinator, as deemed appropriate by the Title IX Coordinator. The procedures for such informal resolutions will be determined at the discretion of the Title IX Coordinator, with agreement of the Parties, as appropriate.

The Informal Resolution process in Non-Title IX Misconduct matters may involve 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; and/or
- 5) other resolution outcomes agreed to by the Parties and deemed appropriate by the College.

Parties may request even in the midst of a Formal Resolution process that a matter be resolved by Informal Resolution instead of Formal Resolution, so long as the Formal Resolution process has not yet proceeded to a hearing, and so long as both Parties and the Title IX Coordinator agree that the Informal Resolution process may be used.

Formal Resolution and Investigation of Non-Title IX Misconduct Matters

Notice of Investigation: If the Formal Resolution process is to be followed, the Title IX Coordinator will prepare a written notice to the Complainant and Respondent as described in the Written Notice of Allegations of Prohibited Conduct section above.

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 report 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 related documentation and/or other pertinent pieces of evidence. The Investigator(s) will provide the Parties with written notice of any and 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 will 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 with non-Parties 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

Content of the Preliminary Investigative Report: Prior to the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which may 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, as deemed relevant by the Investigator(s).

- 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 Policy or what sanctions may be appropriate.

Determinations regarding responsibility and any sanctions, if applicable, will be made by a Determination 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 and all evidence for inspection and review. The Parties may submit to the Title IX Coordinator written comments regarding the Investigative Report within ten (10) business days of the date on 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 why 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. At least ten (10) business days prior to a hearing as described in Section 6 below, the Title IX Coordinator will simultaneously send to each Party and the Party's advisor, if any, the final investigative report in an electronic format or hard copy, for their review and written comment. Any written comments to the final report, which may not exceed ten (10) double-spaced pages, must be submitted to the Title IX Coordinator for inclusion with the other documents to be reviewed by the Determination Panel, within ten (10) business days of the date on which the report was sent.

Notice of Hearing and Determination Panel

The Title IX Coordinator will convene a three (3) member Determination Panel (the "Panel"). The role of the Panel chair will be to facilitate the process, govern the procedural flow, address and/or handle questioning-related issues as specified below, and participate in the Panel's determinations regarding responsibility and any sanctions. The other members of the Panel will be selected from a previously established pool of College community members trained to decide sexual and interpersonal misconduct cases. This pool shall not include students. The hearing will be recorded. Panel deliberations will not 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) The time, date, and location of the hearing.

- 2) A description of any technology to be used to facilitate the hearing.
- 3) 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. The Title IX Coordinator may decide to hold a Live Hearing using such technology or either Party or both Parties may request that the Live Hearing proceed in that manner. Such a request from a Party must be made to the Title IX Coordinator, in writing, at least five (5) business days prior to the hearing.

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 five (5) business days prior to the hearing.

Information on how the hearing will be recorded, and how the Parties may access the recording once the hearing has concluded.

A statement that, if any Party or witness fails to appear for the scheduled hearing, the hearing may be held in their absence, but 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. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing. Notification that the Parties may have an Advisor of their choosing accompany them to the hearing. An invitation to each Party to submit an impact statement at the Live Hearing that the Panel will review during any sanction determination.

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.

Notification that Parties will not be allowed to bring mobile phones/devices into the Live Hearing. 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 in Non-Title IX Misconduct Matters

The following Live Hearing procedures apply to matters that involve allegations of Non-Title IX Misconduct as defined in the Policy, but do not apply to matters that involve allegations of Title IX Sexual Harassment as defined in the Policy and the May 2020 Title IX Regulations.

Based on the Final Investigative Report, the exhibits thereto, other appropriate information of record and the information provided at the Live Hearing, the Panel will decide whether or not the Responding Party is responsible for committing Non-Title IX Misconduct 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 to see and hear one another.
- 2) Advisors of choice may attend hearings in Non-Title IX Misconduct matters with their advisee and may consult with their advisee privately in a non-disruptive manner during the hearing, but they may not address decision-makers, question witnesses or the other Party, or otherwise speak or participate actively in the hearing.
- 3) Questioning of Parties and witnesses will be conducted exclusively by Panel members. The Chair and other Panel members may pose their own questions to Parties and witnesses. The Parties may also submit (either in advance of the hearing, during the hearing by passing written requests to the Chair or using a chat function on a virtual platform, or both) to the Chair proposed questions for the other Party and/or witnesses, and the Chair will decide at their discretion whether or not to pose such questions as phrased, to rephrase them, or not to pose them.
- 4) 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.
- 5) The College expects that all participants, including Parties and Advisors, will participate respectfully and non-abusively during a hearing. Advisors may not interrupt or interfere with the proceedings. If an Advisor's conduct causes, in the Chair's discretion, interference, delay or interruption of the proceedings, the Chair may remove that Advisor from such proceedings, if deemed necessary.

Standard of Proof: All findings and determinations regarding responsibility under the 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 Policy occurred. The preponderance of the evidence standard is not the standard used for determining criminal culpability in most jurisdictions. A determination of responsibility under the Policy does not equate to a finding of a violation of criminal laws.

Section 5 – Sanctions in Title IX Sexual Harassment and Non-Title IX Misconduct Matters

If the Panel determines that a Respondent is responsible for violating the Policy, the Panel will determine the appropriate sanction. The Panel's determination (described in more detail below) will be in writing and will be 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.

Section 6 – Written Determination and Notification of Outcome in Title IX Sexual Harassment and Non-Title IX Misconduct Matters

One or more Panel members will prepare a written determination and notification of outcome regarding responsibility and sanctions. The written determination will include:

- Identification of the section(s) of the Policy alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of Prohibited Conduct to the facts;

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and, where necessary a statement regarding any sanctions and the rationale therefor; and
- Identification of the College's procedures and permissible bases for the Complainant and Respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the College provides the Parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely. If sanctions are necessary, they will be assigned in accordance with the Sanctions section below.

The Panel or a member of the Panel will provide the written determination and notice of outcome to the Title IX Coordinator, who will provide a copy of it to each of the Parties simultaneously.

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, or is otherwise appropriate and necessary.

Section 7 – Appeal of Decision in Title IX Sexual Harassment and Non-Title IX Misconduct Matters

Within four (4) business days of receiving notice of the Determination Panel's determination regarding responsibility and any sanctions, either Party may appeal such a decision by submitting a written letter of appeal to the Appellate Officer. A Party may only appeal on the following grounds:

- 1) A procedural irregularity occurred that affected the outcome of the matter;
- 2) There is new evidence that was not reasonably available at the time of the determination regarding responsibility that could affect the outcome of the matter;
- 3) The Title IX Coordinator, investigator(s), and/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; and/or
- 4) Any sanction(s) is/are inappropriate given the nature of the Policy violation found.

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.

Appellate Officer: The Appellate Officer for determinations by a Panel will be the Vice President for Student Affairs or designee.

Governing Principles: The Appellate Officer may affirm all, part, or none of the Determination 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) 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.
- 2) An appeal is not an opportunity for the Appellate Officer to substitute their judgment on decisions regarding responsibility for that of the Determination Panel; instead, the Appellate Officer's focus must be on whether any of the grounds of appeal have been met.
- 3) The Appellate Officer 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.
- 4) Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Determination Panel for re-investigation and/or reconsideration. Other appeals may be remanded at the discretion of the Appellate Officer.
- 5) Both parties will be informed of any change to the results of a disciplinary process that occurs prior to the time that such results become final, and when such results become final.
- 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 Determination Panel (as in cases of bias), the Determination Panel may order a new hearing before a new Determination Panel.
- 8) The results of a new hearing can be appealed, once, on any of the four 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, reasonable attempts will be made to restore the Respondent to their prior status, but it must be recognized that some opportunities lost may be irreparable.

Sanctions of all types will not be imposed, in full or in part, while an appeal is pending. The Appellate Officer 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.

Section 8 – Revision of these Procedures and the Policy

These Procedures supersede any previous policy(ies) or procedures addressing Prohibited Conduct as defined in the Policy. They will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary at any time and for any reason whatsoever in its sole and unilateral direction, and once any such changes or modifications are published to the campus community, they shall be deemed to be in effect. Neither these Procedures nor the accompanying Policy shall be deemed to constitute a contract or give rise to any enforceable contractual obligation for any purpose whatsoever.

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, regulation, guidance or best and/or promising practice 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 and applied to comply with the most recent applicable law, regulations, guidance, or holdings.

The College acknowledges the obligations and enforcement mechanisms imposed by the background state and federal laws that relate to the subject matter of these procedures, but the College does not undertake any additional legally enforceable obligations through its adoption of these procedures.

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Revision History

Updates Approved by the Morehouse College Executive Leadership Team.
Effective February 21, 2022.