

individuals not known to one another. This conduct is often referred to as “sexual assault” under federal guidance.

Other Inappropriate Sexual Contact. Having or attempting to have sexual contact of any kind other than that defined as “Sexual Violence” with another individual without consent. Other inappropriate sexual contact may include kissing, touching, or making other inappropriate contact with the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner and without permission. This conduct may also be referred to as “sexual assault” in certain circumstances.

Sexual Exploitation. Any act committed through non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, personal benefit or advantage or any other illegitimate purpose. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, or may involve individuals not known to one another. Examples include, but are not limited to, observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, manipulating contraception or prophylaxis without the other party’s knowledge, procuring/stealing an individual’s undergarments without consent, and possession of illegal pornography. This form of misconduct may also be considered a form of sexual harassment or a form of sexual assault, depending upon the context. In certain circumstances, provided the parties are properly notified, the College also reserves the right to adjudicate Sexual Exploitation under the Equal Opportunity and Discriminatory Harassment Policy if the College, in its sole discretion, is satisfied that the behavior does not rise to the level of constituting sexual harassment or sexual assault as defined in this Policy.

- **Inducing Incapacitation:** This includes the provision of alcohol or drugs to an individual, with or without that individual’s knowledge, for the purpose of causing impairment or intoxication to allow another person to take advantage of that individual’s impairment or intoxication.
- **Media-Based Misconduct:** Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, or in a state of undress, without his, her, or their knowledge or consent. Even if a person consented to sexual activity, photographing or taping someone without his, her or their knowledge and agreement goes beyond the boundaries of that consent. Dissemination of photographs or video/audio of someone involved in sexual activity, or in a state of undress, without his, her, or their knowledge or consent constitutes a separate and additional act of sexual misconduct.
- **Aiding or Assisting.** The aiding or assisting in the commission of an act(s) of sexual violence or sexual misconduct is prohibited.
- **Miscellaneous:** The inappropriate behaviors listed above are not an exhaustive list. The College may consider any other conduct that has a sexual or gender-based connotation under the Sexual Misconduct Policy.

Stalking. More than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts or other similar forms of contact are used to pursue, harass, or

make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another. To the extent that the stalking behavior is based on sex, gender, and/or a prior sexual or amorous relationship between the Parties, it may be addressed under this Policy. If the stalking behavior is not based on any of those factors, or otherwise falls outside the requirements of this Policy, the College reserves the right to address it through the Equal Opportunity and Discriminatory Harassment Policy.

Relationship Violence (Domestic Violence and Dating Violence). Relationship violence is any intentionally violent or controlling behavior of one individual by a person who is currently or was previously in a relationship with that individual. Relationship violence may include actual or threatened physical injury, sexual violence, psychological or emotional abuse, and/or progressive social isolation. To the extent that the relationship violence behavior is based upon a prior sexual or amorous relationship⁶ between the Parties, it may be addressed under this Policy. If the relationship violence is not based on any of those factors, or otherwise falls outside the requirements of this Policy, the College reserves the right to address it through the Equal Opportunity and Discriminatory Harassment Policy.

Retaliation.

Acts or attempts to retaliate, or seek retribution against a Party, a witness, or any individual or group of individuals involved in the investigation and/or resolution of an allegation under this Policy. This includes subjecting a person to an adverse action because they made a complaint under any portion of this Policy or responded to, assisted or participated in any manner in an investigation under this Policy. Retaliation may include continued abuse or violence and other forms of harassment.

Retaliation allegations may be consolidated with other forms of prohibited conduct defined in this section if the facts and circumstances significantly overlap. If the facts and circumstances do not significantly overlap, then the College retains discretion to adjudicate the allegation under the Equal Opportunity and Discriminatory Harassment Policy or other College policy or procedure. For example, if a Respondent retaliates against a Complainant with regard to the filing of a complaint, that behavior could be consolidated with the other prohibited conduct alleged, provided appropriate notice is afforded. On the other hand, if the retaliatory conduct is committed by one of the Parties' friend groups who are not otherwise subject to a grievance under this Policy, that behavior could be adjudicated under the Equal Opportunity and Discriminatory Harassment Policy or other College policy or procedure which prohibits such behavior.

The following are additional definitions used in this Policy:

Consent, Coercion and Incapacitation.

Sexual interactions must be consensual.

As used in the above definitions of prohibited conduct, consent, coercion and incapacitation have the

⁶ The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

following meanings under this Policy:

- **Consent** is the affirmative and willing agreement to engage in a specific form of sexual contact with another person who is capable of giving consent. Consent cannot be obtained: (a) through the use of coercion, or (b) by taking advantage of the incapacitation of another individual. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has chosen freely to engage in a sexual contact.
- **Coercion** is defined for purposes of this section as the application of unreasonable pressure to take part in sexual activity or in any of the prohibited conduct listed in the Sexual Misconduct Policy or the Equal Opportunity and Discriminatory Harassment Policy. Unreasonable pressure can be exerted through physical or emotional force, intimidation, misuse of authority, tricks, deception, or outright threats. When someone makes it clear that he, she or they do not want to engage in sexual activity or does not want to go beyond a certain point of sexual interaction, continued unreasonable pressure beyond that point may be considered coercive.
- **Incapacitation.** A person is considered to be incapacitated when a person is so impaired as to be incapable of requesting or inviting the conduct (and therefore conduct of a sexual nature is deemed unwelcome) provided that the Respondent knew or reasonably should have known of the person's impairment or incapacitation. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness. Some potential indicators of incapacitation are vomiting, slurred speech, disorientation, unsteady gait, loss of memory, extreme departure from typical behavior, significant decline in motor coordination, unfocused vision, lack of participation in the sexual activity, and intermittently appearing to fall asleep.

Silence, passivity, or the absence of resistance does not imply consent. Relying solely on non-verbal communication may result in confusion about whether there is effective consent. It is important not to make assumptions. If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and verbally clarifies the other's willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact. An essential element of consent is that it be freely given.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances including, but not limited to, the extent to which an individual affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the position of the individual alleged to have committed the conduct would have understood such person's words and acts as an expression of consent; whether the person alleged to have committed the conduct knew or reasonably should have known that the other person was incapacitated or otherwise incapable of providing effective consent; and whether there are any additional circumstances, known or reasonably apparent to the individual alleged to have committed

different sources of information. The Investigative Report will not include a determination by the Investigator(s) as to whether a Party has violated the Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel, as described below. The draft format of this Investigative Report is important and it reflects that the Investigator(s) may supplement or conduct additional information that may be incorporated. In no instance will the decision-maker review a draft Investigative Report until it is finalized.

(b) Review by the Parties. The Parties will have an opportunity to review the Draft Investigative Report and all evidence collected by the Investigator(s) and may submit written comments about the content of the Investigative Report to the Investigator(s) within ten (10) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and in a secure manner determined by the College. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in his, her or their sole discretion, that the additional time is warranted. Likewise, the secure location and manner of reviewing the Investigative Report can be modified if the Title IX Coordinator deems it necessary and appropriate. Each Party may have such Party's advisor review the Investigative Report with them. Neither the Complainant nor the Respondent (or their advisors, including but not limited to family members and/or legal counsel) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. A Party or an advisor who fails to abide by this Policy may be subject to discipline and/or may be excluded from further participation in the process. The comments submitted by the Parties may not exceed ten (10) double spaced pages (12-point font and one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator. After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report. The Investigative Report will then be submitted to the Title IX Coordinator. Any submissions made by either Party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.

If, at any point in this review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to examination in the Adjudication Process described below, the Investigator may revise the Investigative Report to remove that information so as not to impact the hearing. If this decision is made prior to the Parties' review, it will be noted in a cover memo to the Investigative Report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the hearing.

5. Adjudication by Determination Panel

(a) Convening the Determination Panel. The Title IX Coordinator will convene a three-

member Determination Panel (the “Determination Panel”) from a previously established pool of College community members trained to decide cases pursuant to this Policy and sexual misconduct cases. In no instance shall the Panel include students. In the event that a Respondent is a teaching faculty member⁷, at least one of the members of the Determination Panel shall be a tenured faculty member. The Title IX Coordinator will provide the Parties with the names of the persons assigned as the Determination Panel members for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Determination Panel members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the selected members proposed to be assigned to the Determination Panel. If a conflict of interest is raised regarding any of the individuals assigned to the Determination Panel, the Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Determination Panel. The Title IX Coordinator may consult with other College personnel (and shall consult with the chair of the Committee on Faculty Affairs in the case of any conflict of interest with respect to a proposed Determination Panel member who is a teaching faculty member) to assess any conflicts of interest. The Title IX Coordinator’s decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Determination Panel members and set a subsequent date for the Determination Panel to meet to determine responsibility.

- (b) Determination Panel Role and Authority.** The Determination Panel will make a determination at a Determination Panel hearing as to whether or not the Respondent is responsible for violating the Sexual Misconduct Policy by having engaged in some or all of the reported conduct. The Determination Panel has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points. The Determination Panel, in its discretion, may invite the Investigator(s) to attend a Determination Panel hearing if the Panel believes it would be helpful to have an opportunity to ask the Investigator(s) any questions arising from the Investigative Report. The Determination Panel also has the authority, in their discretion, to speak directly with any persons identified in the Investigative Report. The Determination Panel, as the ultimate decision-maker in the matter, is provided broad discretion. In appropriate circumstances, the Title IX Coordinator may give special instructions to the Determination Panel.
- (c) Role of Advisors at the Hearing.** Each Party may have an advisor of their choice present at a hearing for the limited purpose of conducting witness examinations on behalf of that Party. Advisors may be, but are not required to be, attorneys. If a Party does not have an advisor of their choice present at a hearing, the College will, without fee or charge to the Party, provide an advisor of the College’s choice for the limited purpose of conducting witness examinations on behalf of that Party. No later than ten (10) calendar days before the hearing, Parties should inform the Title IX Coordinator of the identity of any advisor of choice who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

⁷ For purposes of this Policy, the “teaching faculty” is defined by reference to Chapter I, Section A of the Faculty Statutes.

- (d) Hearing Process: Advisor Examinations.** At a time and manner deemed appropriate by the Determination Panel, the advisor for each Party will be permitted to ask the other Party and any witnesses all relevant examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the Party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation. If an advisor is excluded from the hearing the College will delay the proceeding until a new advisor is named or appointed.
- (e) Hearing Process: Evidentiary Decisions.** The College will appoint a procedural coordinator who will make recommendations to the Determination Panel regarding the relevance or propriety of questions asked by advisors. The Determination Panel, as the decision-makers, will affirm or reject these recommendations before the question is answered. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- (f) Hearing Process: General Restrictions.** Questions and evidence concerning a Party's sexual predisposition or prior sexual behavior are generally not relevant, unless such questions and evidence about the prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior that are offered solely to prove consent.
- (g) Hearing Process: Privileged Information.** Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not admissible unless the person holding the privilege has waived the privilege.
- (h) Hearing Process: Virtual Option.** At the request of either Party, the College will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Determination Panel and Parties to simultaneously see and hear the Party or the witness answering questions. Live hearings may be conducted with all 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 each other.
- (i) Hearing Process: Examination Requirement.** In accord with federal regulations, if a Party or witness does not submit to cross-examination at the live hearing, the Determination

Panel may not rely on any statement of that Party or witness in reaching a determination regarding responsibility. The Determination Panel will not 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.

- (j) **Record of Hearings.** The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review. It will not be provided for distribution and the College will provide the same protective measures as used in Section VII.B.4(b) regarding Draft Investigative Reports.
- (k) **Notification of Decision.** Upon reaching a determination of responsibility, the Determination Panel will provide a written notification of its decision to the Title IX Coordinator along with its rationale. If sanctions are necessary, they will be assigned in accord with Section VII.B.6 below. The notification will consist of a brief statement of the allegations and the determinations made by the Determination Panel. While the notification may, at the discretion of the Determination Panel, include a brief description of the determination process, it will not include any recommendations for sanctions with respect to Respondents who are employees or faculty members.
- (l) **Standard of Proof.** All findings and determinations of responsibility for a violation of the Sexual Misconduct Policy will be made using a preponderance of the evidence standard. This standard requires the determination of whether it is more likely than not that a fact exists or a violation of the Sexual Misconduct Policy occurred. Please note that the preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under the Sexual Misconduct Policy does not equate with a finding of a violation of criminal laws. Conversely, lack of a prosecution or conviction in a criminal proceeding does not necessarily imply that the College's Sexual Misconduct Policy was not violated. The two procedures are significantly different and utilize different standards for determining violations.
- (m) **Consolidation.** The College reserves the right to consolidate cases in which there are one or more Complainants and/or one or more Respondents, as defined under this Policy. The College will consolidate cases where the allegations of Prohibited Conduct arise out of the same facts or circumstances. For example, if in the course of a single College-sponsored event a Respondent is alleged to have committed any form of Prohibited Conduct against more than one Complainant, the College may consolidate those complaints for investigation and adjudication under this Policy. If a case is consolidated, the College will consider individualized supportive measures, as appropriate, and will provide individual notice to each Party. All Parties are entitled to all forms of process set forth in this Policy and the College reserves the right to issue a single Investigative Report, hold a single hearing, and otherwise modify the Policy to ensure all Parties are afforded equal protections in compliance with Title IX. The College may also consider prior relevant findings of responsibility against a Respondent in providing an appropriate sanction after the Respondent is separately found responsible for the behavior in question.

(n) **Student Groups, Organizations and Teams.** A student group, organization or team may be held collectively responsible for a violation of this Policy when one or more members of the group or other individuals associated with the group, organization or team are found responsible for a violation of this Policy and the Determination Panel separately determines that:

- members of the group, organization or team acted in concert with respect to misconduct;
- the individual found responsible for committing the misconduct was either acting on behalf of the group, organization or team or engaged in an activity sponsored, financed or endorsed by the group, organization or team or its leaders;
- the misconduct grows out of, occurs during, or is related to any activity or event sponsored, financed or endorsed by the group, organization or team;
- any leader, officer, or team captain of group, organization or team had knowledge of the misconduct or incident before or while it occurred and failed to take corrective action;
- or
- a pattern of individual misconduct by members of the group, organization or team is found to exist.

The designated student leader or leaders (e.g., president, officer(s), or team captain(s)) shall represent the student group, organization or team throughout the process.

6. Determining Sanctions

(a) **Sanctioning Decision.** The College employees responsible for determining sanctions are below and will be referred to as the Sanctioning Official. As soon as possible, but no later than three (3) calendar days after delivery of the Determination Panel's notification of decision, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the Sanctioning Official. The Title IX Coordinator, in consultation with other College officials as appropriate, will determine whether a disqualifying conflict of interest exists, in which case the Title IX Coordinator will appoint a different Sanctioning Official. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will provide the Sanctioning Official with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report, the Parties' responses to that Report (if any), and information provided by Human Resources, Community Standards or other appropriate department concerning any prior College discipline of the Respondent. Following determination of sanction(s), the Sanctioning Official shall notify the Title IX Coordinator of the sanction(s).

(i) **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Associate Dean of Students or his, her or their designee, who may do so in consultation with other College officials. The determination of the Associate Dean of Students or his, her or their designee will be shared with the Parties as set forth in Section VII.B.7.

(ii) **Teaching Faculty.** Sanctions regarding teaching faculty will be determined by the

Provost/Dean of the College (or his, her or their designee⁸) in consultation with other College officials as appropriate. The Sanctioning Official will determine an appropriate sanction(s). If the Sanctioning Official determines that a sanction of dismissal for is recommended, the sanction will be reviewed under Section VII.B.7(b).

(iii) **Exempt Employees, Other Than Teaching Faculty.** Sanctions regarding exempt employees, as defined by the College, will be determined by the Employee's Vice President (or his, her or their designee) or in the case of an employee in the Athletics Department or who reports to the President, the President's designee. The Director of Human Resources (or his, her or their designee) will be consulted, and any other College officials may be consulted, on any sanction.

(iv) **Non-Exempt Employees and Third Parties.** Sanctions regarding non-exempt employees, as defined by the College, vendors, independent contractors and other third parties will be determined by the Director of Human Resources (or his, her or their designee), who may consult with other College officials.

(b) Types of Sanctions.

(i) **Employees, including Faculty Members.** Sanctions imposed with respect to Respondents who are faculty members or other employees may include, but are not limited to, one or more of the following: dismissal from employment, non-renewal of an employment contract, suspension (without pay), probation, reprimand, warning, restitution, training and/or counseling, no-contact order, removal from an administrative appointment, removal of one or more job responsibilities with a corresponding salary reduction, removal from a committee, removal from a leadership position, reassignment of advisees, prohibition against new advisees, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service, among others.

(ii) **Students.** Sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, restriction from extracurricular programs or activities, loss of leadership opportunity or positions in activities, housing restriction/relocation, and/or loss or restriction from College employment, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service.

(iii) **Student Groups, Organizations and Teams.** Sanctions for groups, organizations and teams may include, but are not limited to, suspension, revocation or denial of registration or recognition, probation, reprimand, warning, restitution, education, or restriction, among other possible sanctions.

⁸ Consistent with Section VII.B.9(f), the Dean of the College, in consultation with the Title IX Coordinator, may designate an administrator who holds a leadership position in Academic Affairs to serve in this role.

(iv) **Considerations.** In determining an appropriate sanction, the College may take into account the nature and degree of sanction that may be necessary to stop the misconduct, prevent it from recurring, and address its effects and also may take into account any other factors that may lead to a fair and appropriate outcome under the circumstances. Such factors may include, for example, but are not limited to:

- The nature and circumstances of the misconduct, including whether it involved violence, the threat of violence, or coercion; how severe and pervasive it was; whether it occurred once, more than once, or repeatedly; and whether or to what extent the Party found responsible intended or reasonably should have expected that the conduct would harm the Complainant or others.
- The impact of the misconduct on the Complainant, including whether or to what extent the misconduct has interfered or may interfere with the Complainant's education, employment, or other opportunities at the College, and whether or to what extent the misconduct has resulted or may result in physical, emotional, or other harm.
- The impact of the misconduct on the College community, including whether or to what extent the misconduct has interfered or may interfere with an educational, employment, or other aspect of the College environment.
- The disciplinary history of the Party deemed responsible.
- Any other mitigating or aggravating circumstances, such as whether the Party found responsible has a history of other misconduct and/or discipline at the College and whether the Party found responsible accepted responsibility and/or remorse for his, her or their conduct and its effects. For example, misconduct of an employee with any type of past or present supervisory responsibility for a Complainant shall be considered a significant aggravating factor.
- The range of sanctions imposed in cases involving similar or analogous circumstances.

Possible sanctions for those found responsible for sexual violence, other inappropriate sexual contact, domestic/dating violence, stalking and hate crimes:

Community service
Reflection paper
Educational training
Probation
Suspension
Expulsion/termination of enrollment or employment
Limitation of other rights, privileges or duties

Except for expulsion/termination of enrollment or employment, all sanctions may be combined with one or more other sanctions listed in Section VII.B.6(b)(i) or (ii) above.

- (v) **Additional Remedies.** The Sanctioning Official may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim supportive measures. If a Complainant or Respondent declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Title IX Coordinator also may consider broader remedial action for the College community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, in the Title IX Coordinator may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure, including, but not limited to the Equal Opportunity and Discriminatory Harassment Policy, to the appropriate College officials to address such matters, irrespective of the finding under this Policy.

7. Notification of Investigation Outcome

Upon completion of Sections VII.B.5 or 6, as necessary, the Title IX Coordinator will inform the Parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) 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 or employment interest about the outcome of the disciplinary proceeding. As a general matter, those other College officials will include, but are not limited to, the following:

- If a student has been found responsible – the student’s class dean and other appropriate College officials.
- If a faculty member has been found responsible – the individual’s department chair, the director of any appropriate academic program and, if applicable, one or more class deans.
- If an exempt employee other than faculty member has been found responsible – the individual’s direct supervisor.
- If a non-exempt employee has been found responsible – the individual’s direct supervisor.

Notice to these other individuals will be accompanied by a statement that the information may not be further disclosed to anyone else without the specific approval of the Title IX Coordinator, except as necessary to protect the safety of one or more individuals.

If the alleged victim is deceased as a result of a crime involving sexual assault, other nonconsensual sexual contact, stalking, domestic/dating violence or hate crime, the next of kin of such alleged victim will be provided the notice of outcome upon written request to the Title IX Coordinator.

8. Appeals

(a) All Appeals (Other Than Appeals Involving a Respondent Who Is a Teaching Faculty Member with a Recommended Sanction of Dismissal).

The following appeal process applies to all appeals other than any appeal involving a determination in which a Respondent is a Teaching Faculty Member with a recommended sanction of dismissal which are addressed under Section VII.B.8(b) below.

(i) **Submission of Appeal by A Party.** Within seven (7) calendar days of the delivery of the notice of the outcome, either Party may appeal the decision by submitting to the Title IX Coordinator a letter stating an appeal solely on the basis of one or more of the following grounds:

1. **Procedural error.** The Investigator(s), Procedural Coordinator, Determination Panel, the Title IX Coordinator, and/or Sanctioning Official failed to follow the Process in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Process that the Investigator(s), Procedural Coordinator, Determination Panel, the Title IX Coordinator, and/or Sanctioning Official failed to follow and an explanation of the material prejudice resulting from such error(s);
2. **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s), the Determination Panel, or the Sanctioning Official, and which likely would have changed the finding of responsibility or the sanction imposed had it been available; or
3. **Bias or a conflict of interest** with regard to the Title IX Coordinator, Investigator(s), Determination Panel or Sanctioning Official that materially impacted the outcome or the sanction.

The Party submitting the appeal must set forth in detail the grounds for review and must attach all materials that he, she or they wish to have considered in the appeal process which support the appeal ground(s) set forth above. Appeals are only permitted on one or more of the three grounds described above, and appeals that do not meet those criteria or made on any other basis are not required to be considered by the Appellate Officer(s). Mere disagreement with the determination(s) of responsibility or sanction(s) is not sufficient grounds for appeal.

(ii) **Opportunity of the Other Party to Review the Appeal.** The Title IX Coordinator will provide an opportunity to review the appeal submitted by one Party to the other Party. This review will take place at a secure location and in a secure manner determined by the College. The other Party may submit materials that he, she, or they wishes to have considered in the appeal process within seven (7) calendar days of receipt of the appeal, but is not required to do so. A Party's

decision not to respond to an appeal shall not be considered evidence of agreement with the filed appeal.

- (iii) **Page Limit.** The appeal and appeal materials submitted by a Party may not exceed ten (10) double spaced pages (12-point font with one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator.

- (iv) **Appointment of Appellate Officers.** The Appellate Officer(s): In the instance of an appeal under this Section VII.B.8(a), the Title IX Coordinator will appoint one or more Appellate Officers (the “Appellate Officer(s)”) from a previously established pool of College employees who have received training on sexual misconduct cases and appeals; in any case involving a teaching faculty member, there will be a three-member Appellate Officer panel, including at least one tenured faculty member (selected by the Title IX Coordinator in consultation with the chair of the Committee on Faculty Affairs). The Title IX Coordinator will provide the Parties with the names of the assigned Appellate Officer(s) for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Appellate Officer(s), the Parties should inform the Title IX Coordinator in writing of any conflicts of interest in regard to the assigned Appellate Officer(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned as the Appellate Officer(s). The Title IX Coordinator may consult with other College personnel to discuss any conflicts of interest. The Title IX Coordinator’s decision regarding any conflicts is final.

- (v) **Determination of Appellate Officer(s).**
 - (1) The Appellate Officer(s) will decide the merits of the appeal and, in so doing, may consult with the Investigator(s), the Determination Panel, the Sanctioning Official, or any other individual that the Appellate Officer(s) deems appropriate (and shall consult with any such individual who is alleged to have caused a procedural error). In appropriate circumstances, the Title IX Coordinator may give special instructions to the Appellate Officer(s).
 - (2) Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the College) can be imposed, in full or in part, at the sole discretion of the College while an appeal is pending.
 - (3) The Appellate Officer(s) may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or the Appellate Officer(s) may refer the matter back to the Investigator(s), original

or a new Determination Panel⁹, and/or the Sanctioning Official for further consideration. If the matter is referred back to the Investigator(s), the Determination Panel, and/or the Sanctioning Official for further consideration, the Appellate Officer(s) will provide specific instructions with the referral. In the event of a referral for further consideration, the Title IX Coordinator will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this Policy.

(4) The decision of the Appellate Officer(s) regarding the appeal will be in writing and is final.

(5) The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

(b) Appeals with respect to a Respondent who is a Teaching Faculty Member Involving a Recommended Sanction of Dismissal.

The following appeal process applies to appeals involving a determination in which a Respondent is a Teaching Faculty Member with a recommended sanction of dismissal of the Teaching Faculty Member and is the sole method of appeal. The appeal will be reviewed the following procedure:

(i) **Submission of Appeal by A Party.** Within seven (7) calendar days of the delivery of the notification of the outcome, either Party may appeal by submitting to the Title IX Coordinator a letter stating an appeal solely on the basis of one or more of the following grounds:

(1) **Procedural Error.** The Investigator(s), Procedural Coordinator, Determination Panel, Title IX Coordinator and/or Sanctioning Official failed to follow the Process in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Process that the Investigator(s), Procedural Coordinator, Determination Panel, Title IX Coordinator and/or Sanctioning Official failed to follow and an explanation of the material prejudice resulting from such error(s);

(2) **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s), the Determination Panel, or the Sanctioning Official, and which likely would have changed the finding of responsibility or the sanction imposed had it been available;

(3) **Bias or a conflict of interest** existed with regard to the Title IX

⁹ In the case of a finding of an appeal granted for a procedural error by the Determination Panel, a new Determination Panel will be used.

Coordinator, Investigator(s), Determination Panel or Sanctioning Official that materially impacted the outcome or the sanction; or

- (4) **Sanction of Dismissal Inappropriate.** That the sanction of dismissal was inappropriate based on a consideration of the nature and circumstances of the misconduct, including the severity, frequency and duration, the impact of the misconduct on the Complainant and/or the College community, the disciplinary history of the Respondent found responsible, and any other mitigating or aggravating circumstances and the need to take effective corrective action to prevent the recurrence of the violation(s) and remedy its effects.

The Party submitting the appeal must set forth in detail the grounds for review and must attach all materials that he, she or they wishes to have considered in the appeal process. Appeals are only permitted on one or more of the four grounds described above, and appeals that do not meet those criteria or made on any other basis are not required to be considered. Mere disagreement with the determination(s) or responsibility or sanction(s) other than dismissal is not sufficient grounds for appeal. Sanctions of all types (including, but not limited to, any form of suspension or separation from the College but excluding dismissal of a faculty member) can be imposed, in full or in part, at the sole discretion of the College while an appeal is pending.

- (ii) **Opportunity of the Other Party to Review the Appeal.** The Title IX Coordinator will provide a copy of the appeal submitted by one Party to the other Party, and the other Party may submit materials that he, she or they wishes to have considered in the appeal process within seven (7) calendar days of receipt of the appeal.
- (iii) **Page Limit.** The appeal and appeal materials submitted by a Party may not exceed ten (10) double spaced pages (12-point font with one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator.
- (iv) **Appointment of Appeal Panel.** In the instance a Party appeals, the Chair of the Committee on Faculty Affairs in consultation with the Title IX Coordinator will convene a three-member Appeal Panel (the “Appeal Panel”) consisting of tenured members of the Committee on Faculty Affairs (or other tenured faculty members from a previously established pool in the event there are not enough members of the Committee on Faculty Affairs to so serve) who have received training on sexual misconduct cases and appeals. The Title IX Coordinator will provide the Parties with the names of the persons assigned to the Appeal Panel for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Appeal Panel members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the

individuals proposed to be assigned to the Appeal Panel. The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Appeal Panel. The Title IX Coordinator shall consult with the chair of the Committee on Faculty Affairs to assess any conflicts of interest. The Title IX Coordinator's decision regarding any conflicts is final.

(v) **Determination of Appeal Panel.**

- (1) The Appeal Panel will decide the merits of the appeal and, in so doing, may consult with the Investigator(s), the Determination Panel, the Sanctioning Official, or any other individual that the Appeal Panel deems appropriate.
- (2) The Appeal Panel may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or may refer the matter back to the Investigator(s), the original or a new Determination Panel¹⁰, and/or the Sanctioning Official (regarding determination of the sanction) for further consideration. In the event of a referral for further consideration, the Appeal Panel will provide specific instructions with the referral, the Title IX Coordinator will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this Policy.
- (3) Any Appeal Panel decision regarding the appeal under Section VII.B.8(b)(i)(1) (procedural error) or (2) (newly discovered information) is final. Any Appeal Panel decision regarding an appeal under Section VII.B.8(b)(i)(3) (bias or conflict of interest) or (4) (recommended dismissal) and/or any recommended sanction of dismissal under Section VII.B.6 will be referred to the President for review under the immediately following section.

(vi) **President and Executive Committee Review of Recommended Sanction of Dismissal.**

- (1) If the Sanctioning Official recommended a sanction of dismissal and no appeal was requested, the President will refer the sanction recommendation to the Executive Committee of the Board for review and consideration.
- (2) If the Sanctioning Official recommended a sanction of dismissal and the Appeal Panel recommended a sanction less than dismissal, the President will determine whether to accept the Appeal Panel sanction recommendation (which shall then become the final sanction), impose a different sanction that is less than dismissal (which shall then become the final sanction) or

¹⁰ In the case of a finding of an appeal granted for a procedural error by the Determination Panel, a new Determination Panel will be used.

recommend a sanction of dismissal for review and consideration by the Executive Committee of the Board.

- (3) If the Sanctioning Official and the Appeal Panel recommended dismissal, the President will refer the sanction recommendation(s) to the Executive Committee of the Board for review and consideration.
 - (4) If the President refers a recommended sanction of dismissal to the Executive Committee of the Board, the referral will be communicated in writing by the President or the Title IX Coordinator to the Complainant and Respondent. The President or the Title IX Coordinator will provide the Executive Committee with the Investigative Report, any response of the Complainant and/or Respondent to the Investigative Report, the Determination Panel written findings, the recommendation of the Sanctioning Official of dismissal, and if applicable, the written appeal materials submitted by the Complainant and/or the Respondent to the Appeal Panel, the Appeal Panel's written decision pursuant to Section VII.B.8(b)(v), and the Sanctioning Official's recommended sanction following such appeal. The Executive Committee may grant both the Respondent and the Complainant the right to address the Executive Committee, if the Executive Committee deems it appropriate. The Executive Committee of the Board of Trustees will make the final determination of the sanction.
 - (5) The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.
- (vii) **Training of the President and Executive Committee of the Board.** Each of the President and the Executive Committee of the Board of Trustees shall receive training on sexual misconduct cases and appeals prior to reviewing any matter under Section VII.B.8(b)(vi).

9. Timeframe for Completion of Investigation and Disciplinary Process

The College cannot promise the definitive timeframe of this process, but will endeavor to complete its investigation and disciplinary process in a prompt manner. The U.S. Department of Education has made clear that the length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the College temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this Policy may be altered by the Title IX Coordinator for good cause. The College's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

10. Additional Matters

- (a) **Duty of Honesty.** All Parties and witnesses are obligated to be completely honest

during the course of the entire process set forth in this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate College disciplinary action. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the Policy.

- (b) **Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Misconduct Policy and these procedures. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Misconduct Policy may be subject to separate and/or additional College disciplinary action.
- (c) **Respect for Privacy.** The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Sexual Misconduct Policy. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution to override a request for privacy or confidentiality in order to meet its obligations under the law. In the event circumstances result in the College overriding a request for privacy or confidentiality to meet its obligations, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved. See Section VI.A.1.
- (d) **Recording the Proceedings.** As set forth above, the College will record the proceedings but the Parties are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Sexual Misconduct Policy or these procedures or the Investigative Report. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if he, she or they concludes, in his, her or their sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.
- (e) **Disability Accommodations.** The College is committed to ensuring that all community members, and applicants, have an equal opportunity to participate in all of its programs and activities. If any person requires an accommodation, because of disability, to access any part of this process, students may make that request to the Office of Accessibility Services by telephone at 508-793-3693 and employees or others to the Office of Human Resources at 508-793-3391. Any accommodations will be provided in consultation with the Title IX Coordinator to ensure they do not impact the rights or protections of any Party or witness.
- (f) **Delegation.** Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he, she or they may designate another qualified member of the College community to assume the role at issue, as necessary and appropriate. Where another College official or employee is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he, she or they may, in consultation with the Title IX Coordinator, designate another College official or employee to assume

the role at issue, as necessary and appropriate.

(g) Amnesty for Students Reporting Sexual Violence, Relationship Violence and Stalking.

The College encourages reporting under the Sexual Misconduct Policy and seeks to remove barriers to reporting. Students may be hesitant to report sexual violence, relationship violence or stalking out of a concern that they, or witnesses, might be charged with a violation of the College's drug and alcohol policies or Community Standards. While the College does not condone such behavior, the College places a priority on the need to address sexual violence, relationship violence and stalking. The College generally will not hold a student who in good faith reports or is a witness during an investigation of sexual violence, relationship violence and stalking under the Sexual Misconduct Policy accountable for disciplinary violations of the College's Community Standards that do not place the health and safety of any other person at risk or create a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.

(h) Special Situations.

The College retains the right to determine, in its sole discretion, if it will address a report of conduct under the Sexual Misconduct Policy administratively and outside of the process described herein when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines, in his, her or their sole discretion, that it is in the best interest of the College and/or the community to do so. Without limiting the foregoing:

- (i) When an investigation in a matter indicates that there may be one or more possible violations of any other policy, rule or requirement of the College in addition to an alleged violation of the Sexual Misconduct Policy, the Title IX Coordinator will review such material and consult with the Director of Student Conduct and Community Standards, Director of Human Resources or other appropriate College officials, as appropriate, to determine if there are any alleged violations of any other policy, rule, procedure or requirement. In these situations, the investigation and resolution procedure may follow the Sexual Misconduct Policy to determine whether such other alleged violation(s) took place in addition to the alleged violation of the Sexual Misconduct Policy or may be addressed separately as determined by the Title IX Coordinator.
- (ii) If, following the receipt of an alleged violation of the Sexual Misconduct Policy, the Complainant declines to participate in the investigation or resolution process, the Title IX Coordinator may decide to administratively close the investigation at any point in the investigation or resolution process after consideration of the factors set forth in Section VI.A.1 in the Title IX Coordinator's sole discretion.

State Law Definitions

The following are excerpts compiled from the Massachusetts General Laws that describe how certain relevant behavior is defined in Massachusetts. These definitions are not identical to the definitions of conduct prohibited in the College's Sexual Misconduct Policy, but the College considered these definitions in developing its Policy.

Sexual Harassment

(compiled from M.G.L. Ch. 151B)

“Sexual harassment” means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or enrollment or is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement; or
- Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work or educational performance by creating an intimidating, hostile, humiliating or sexually offensive work or educational environment.

Sexual Assault (Rape, Indecent Assault & Battery)

(compiled from M.G.L. Ch. 265, § 13 & 22)

Sexual assault is defined under Massachusetts law as rape or indecent assault and battery.

Rape is defined as occurring when a person has “sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his, her or their will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise...”

Indecent assault and battery occurs when one person touches another person in an “indecent” way. Examples of indecent assault and battery include touching a person's buttocks, breasts, or genitals without consent. The Commonwealth must prove that the defendant touched the alleged victim without justification or excuse; and that the touching was “indecent;” and that the alleged victim did not consent.

An indecent act is one that is fundamentally offensive to contemporary standards of decency.

Stalking

(compiled from M.G.L. Ch. 265, § 43)

The act of “willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress and makes a threat with the intent to place the person in imminent fear of death or bodily injury.” Stalking includes, but is not limited to, acts or threats conducted by mail or by use of a telephonic or electronic communication device. Communications include, but are not limited to, electronic mail, internet communications, instant messages or facsimile communications.

Domestic and Dating Violence

(compiled from M.G.L. Ch. 209A)

“Abuse” is defined as “the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat, or duress.”

Family or household members are defined as “persons who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage;
- having a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive relationship, which shall be adjudged in consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.”

Consent *(not defined by M.G.L. in this context)*

In Massachusetts, it is illegal to have sex under any circumstances with someone who is incapable of giving consent due to incapacity or impairment; incapacity or impairment may be caused by intoxication or drugs, or because a victim is underage, mentally impaired, unconscious, or asleep. For purposes of this policy, consent is an explicitly communicated, reversible, mutual agreement to which all parties are capable of making a decision.

Massachusetts has several laws that define the age of consent and the additional penalties that attach if a person is under the age of 16 or 14. *E.g.*, statutory rape laws, indecent and assault and battery on a person under the age of 14.

Retaliation

(referenced by M.G.L. in various contexts, e.g., Chap. 151B.)

Retaliation is frequently addressed by the U.S. Department of Education’s Office for Civil Rights (OCR). OCR’s legal standard for addressing retaliation claims is as follows:

A claim for retaliation must establish several elements. First, the facts must indicate that the complainant engaged in a protected activity, *i.e.*, exercised a right or took some action that is protected under the laws OCR enforces, including Title IX. Second, the institution must be on notice of the protected activity. Third, the institution must take an adverse action against the complainant. And fourth, there must be a causal connection between the protected activity and the adverse action. If any of these four elements cannot be established, then a claim of retaliation cannot be substantiated. If, on the other hand, all four elements are established, then OCR next analyzes whether there is a legitimate non-discriminatory reason for the retaliatory action in question. If no legitimate non-discriminatory reason is put forward, or if the reason is found to be a mere pretext for retaliation, then OCR may find that there was retaliation.