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INSTRUCTIONAL STAFF GRIEVANCE PROCEDURE

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INSTRUCTIONAL STAFF GRIEVANCE PROCEDURE

See [PHASES AND TIMELINES](#) for an overview of this Procedure

I. INTRODUCTION: PURPOSE AND PARAMETERS OF THIS PROCEDURE

A. Goals of this Procedure.

Swarthmore College is committed to establishing and maintaining a community free from all forms of discrimination, harassment, retaliation, and other misconduct -- and in which the greatest academic potential of students and the greatest professional potential of instructional and non-instructional staff may be realized. Providing mechanisms for early intervention and dispute resolution of issues, whether or not related to a protected classification, is essential to restoring harmony and respectful, professional relationships within our workplaces and learning environments. It is also consistent with Swarthmore College's culture, mission, and values, as well as reflecting good practice within the academic community.

The outcomes of this Procedure will vary depending on the nature of the concerns and the severity of the alleged infractions. Ultimately, we seek to create a healthy learning and working environment for all members of the College community through compassion, justice, and restoration. We emphasize consultative resolution (see section III.B.) as a preferred methodology, while understanding its limitations and the need in some cases for the Formal Grievance Procedure (see section IV) that can lead to formal sanctions.

B. Application Solely to Grievances Against Instructional Staff.

The following Procedure is limited to grievances brought against instructional staff and may be initiated by any member of the College community, including students, instructional staff, staff, or any individuals employed, studying, living, or having any official capacity at the College. The term "instructional staff" is defined by the Handbook for Instructional Staff ([Preface](#)). Grievances against anyone in this category should be brought to the attention of the Equal Opportunity Officer and/or the Provost and Dean of the Faculty as soon as possible.

Grievances against other members of the College community who are not instructional staff are addressed by the College through other Procedures. Moreover, grievances that instructional staff wish to bring against students or staff who are not instructional staff should be lodged with the Equal Opportunity Officer (if directed at staff) or Vice President of Student Affairs (if directed against students). In some circumstances, it is unclear which Procedure applies or whether multiple Procedures apply (for instance, where a grievance is directed against both a student and an instructional staff member). The Equal Opportunity Officer is the College representative

designated to review grievances and direct them to the proper Procedure or office. In the event that the Equal Opportunity Officer is the respondent to a grievance or otherwise has a conflict, the grievance may be filed with the Vice President for Human Resources.

C. Grievances Subject to This Procedure.

Depending upon the nature of a grievance, it may be subject to being assessed under multiple procedures. Grievances that can be addressed according to this Procedure include the following categories:

i. Grievances Raising Concerns of Discrimination, Harassment, or Retaliation:

All members of the community are entitled to a learning and work environment free of discrimination, harassment, or retaliation and are responsible for ensuring that the community is free from all such forms of misconduct. The College's [Notice of Non-Discrimination](#) expressly prohibits any form of discrimination, harassment, or retaliation on the basis of any College-recognized protected classification; this policy covers all forms of discrimination, harassment, or retaliation. Retaliation involves adverse action taken because a community member raises complaints about discrimination or harassment; participates in an investigation into such allegations; or supports those who do so.

Discrimination, harassment, and retaliation are all prohibited by law and College policy. They also constitute profound threats to our learning, living, and work environments and will not be tolerated. The College provides methods, including this Procedure, for all members of the community to seek prompt, impartial, and balanced assessment and resolution of such concerns.

Such concerns when lodged against an instructional staff member are subject to this Grievance Procedure. However, a grievance that raises claims of discrimination, harassment, or retaliation may as a matter of legal compliance require an investigation and fact-finding process by a trained investigator, designated by the College, before the grievance advances through this Grievance Procedure. Moreover, such grievances may include intermingled allegations of Title IX violations, which must be addressed using the College's Title IX Policy. To ensure that grievances are properly reviewed, all grievances brought against instructional staff are subject to a threshold review as set forth in Section II below, to determine whether a consultative resolution is sufficient, a preliminary investigation should be conducted, or whether other College Procedures apply.

ii. Grievances Raising Concerns of Substantial Unfairness:

This Grievance Procedure also encompasses claims of substantial unfairness when made against a member of the College's instructional staff and not falling within some other Policy (such as grade appeals, review of reappointment decisions, or tenure denial appeals). "Substantial unfairness" for purposes of this Grievance Procedure refers to conduct on the part of an instructional staff member that (a) violates a College policy or professional ethics standards; and (b) has a direct and substantial adverse impact upon the working or learning environment of the grievant in question.

Many general concerns about workplace or classroom environment, or about interpersonal conflicts between community members, will not rise to the level of conduct falling within this definition but are nonetheless important to address. Those should be brought to the attention of an appropriate staff member, department, or provost office and may, in the College's discretion, be addressed through meetings or through a mediated resolution. Such concerns may also be brought to the attention of the Equal Opportunity Officer, who is designated to review all grievances on a threshold basis and advise the grievant and other parties as to whether this Grievance Procedure or other College dispute-resolution Procedures apply.

D. Grievances Subject to Other Procedures.

Members of the Swarthmore College community have significant rights and responsibilities to each other, including some that arise from legal or regulatory requirements and will be addressed using other College policies rather than this Grievance Procedure:

- i. The College is committed to investigating and resolving allegations of sexual harassment, sexual misconduct, stalking, indecent exposure, intimate-partner violence, and other conduct falling within the provisions of its Title IX Policy, as amended from time to time. Alleged violations of the College's [Title IX and College-Defined Sexual Misconduct Policy](#) will be addressed by the [Procedures for Resolution of Title IX and College-Defined Sexual Misconduct Against Staff and Instructional Staff Including Faculty](#) and are not subject to this Grievance Procedure.
- ii. The College is committed to fairness and appropriate process in its formal contractual arrangements with instructional staff and maintains specific policies and Procedures addressing reappointment and termination of appointment, including appeal processes applicable to those decisions. Grievances relating to such formal employment decisions are subject to Procedures in the [Handbook for Instructional Staff](#) sections entitled "Review of Appointment Renewal Decisions" and "Termination of Appointments," rather than this Grievance Procedure.

- iii. The College is committed to fair grading, compliance with federal privacy protections for student education records, and other fair and appropriate academic workplace policies. A grievance that falls within some other specific College Policy (such as grade appeal, FERPA, or Human Resources policies) will be addressed under those policies rather than this Grievance Procedure.
- iv. Complaints by instructional staff against non-instructional staff (such as students or staff) will, as noted, be addressed using other Procedures consistent with Human Resources and Student policies, rather than this Grievance Procedure: See [Student Handbook](#) and [Employee Handbook](#).
- v. Grievances by an instructional staff member that raise concerns about a College policy (including College procedures and practices) will not be addressed by the Instructional Staff Grievance Procedure, but instead are to be brought to the Provost and Dean of Faculty for an administrative policy review. The Provost and Dean of Faculty will initiate timely assessment of the grievance by consulting with the elected members of the COFP and relevant administrators, committees or other bodies of the College to determine if any policy changes are appropriate in light of the grievance and the purpose and effect of the policy in question. This consultation could include, for example, the Equal Opportunity Officer, the COFP, the Council of Educational Policy, Human Resources, or others, as deemed appropriate in the College's discretion. The Provost and Dean of Faculty or designee will consult with the aggrieved instructional staff member and/or with other affected parties about the grievance and any changes deemed appropriate to policy.
- vi. Grievances filed against the Provost and Dean of the Faculty are usually reviewable under other policies, including but not limited to the College's policies and procedures for review of formal contractual actions or its Title IX Policies; in such circumstances, they will be forwarded as appropriate for action under the appropriate policies after threshold review by the Equal Opportunity Officer. Grievances against the Provost and Dean of the Faculty that do not fall within other College review policies, however, will be forwarded to the President or designee. They will be addressed separately by the President or designee and are not subject to this Policy. As part of such review, the President or designee should consult with COFP. The decision of the President or designee is final.
- vii. Grievances filed against the President will be forwarded to the Chair of the Swarthmore College Board or designee. They will be addressed separately by the Chair of the Board or designee and are not subject to this Policy. The decision of the Chair of the Board is final.
- viii. The faculty consider the President, Provost, and their designees (who maintain faculty status while in their positions) (good faith, speedy resolution, and informal consultative resolution) when a grievance has been brought against them.

E. Preliminary Considerations

i. Required Good-Faith Use of this Procedure.

Any member of the college community seeking review of the actions of an instructional staff member under this Grievance Procedure must do so in good faith. This process must be followed in proper sequence and consultative resolution, if required as set forth in Section III.B., must be honored. Where a grievant does not engage in this process in good faith or raises a grievance that does not meet the requirements of Section I.C above, the grievance may be terminated by the Grievance Committee, in consultation with the Equal Opportunity Officer and the Provost and Dean of the Faculty, with no further action taken by the Committee, as set forth in Sections IV.F.iii below.

Good faith participation in this Grievance Procedure involves (a) attending meetings upon reasonable notice; (b) interacting respectfully with the other party as well as any College representative or College-appointed outside professional involved in facilitating or mediating the dispute; (c) not knowingly communicating untruthful statements to others about the other party in order to disparage them during the consultative resolution process; and (d) continuing to consult, and not terminating one's participation in the process, during the designated 30-day consultative resolution process (except as permitted by law). Parties engaged in a consultative resolution process are expected to use the 30-day period constructively, striving for a resolution that permits colleagues to continue working together collaboratively and students to gain the continued benefit of the instructional staff member's teaching. The 30-day consultative resolution period may only be terminated by action of the Equal Opportunity Officer, or President or designee, where no further consultation appears productive. Formal grievance review is required to be preceded by a good-faith consultative resolution process before filing a formal grievance request and obtaining committee review under this Procedure, unless the grievance is based on discrimination, harassment or retaliation (as described in I.C.i above). Grievances that have not first been addressed through consultative resolution in accordance with this Grievance Procedure may be terminated as described in Section IV below.

ii. Support Persons.

At the Consultative and any other stage of the Grievance Procedure, both grievant(s) and respondent(s) may be accompanied by a campus support person of their choice (one per grievant/respondent) to meetings with the grievant, respondent, Committee, or other College personnel involved. Support persons must be College instructional or other staff members; moreover, the support person cannot be an identified witness or have been involved in the matter that is being grieved. Support persons attend meetings solely to support the party; all communications by and with College personnel will involve the grievant/respondent(s) themselves, who may then choose whether to share information privately with their support person. Support person(s) are expected to

be silent, except to communicate confidentially with the party or ask for a short break. They must maintain confidentiality to the same extent the parties are required to maintain it. Support person(s) may be required to leave any meeting if they are disruptive or fail to honor these conditions and may not delay, disrupt, or otherwise take action to interfere with the integrity of the Grievance Procedure.

iii. **Non-Retaliation:**

Members of the College community who make use of this policy may do so without fear of retaliation from other members of the community due to participation in the process. Retaliation against any member of the community for good faith participation is a violation of College policy, will not be tolerated, and will be subject to disciplinary action. Any violation of the non-retaliation policy should be reported to the Equal Opportunity Officer or the Provost and Dean of the Faculty immediately.

iv. **Information Gathering and Privacy.**

During all phases of this Procedure, the parties and involved College personnel may discuss the nature of any grievance or response and obtain information from within the College on a confidential basis and may review certain documentation maintained within the College as private, in order to review the concerns and facilitate a constructive resolution. However, information should only be shared on a need to know basis in order to facilitate a resolution, either informally or through the Formal Grievance Procedure. The parties may also share or seek information, on a limited basis, solely for the purposes of participating constructively in the Grievance Procedure and preparing information for use of the Grievance Committee.

However, it is extremely important that all participants at every level and phase of a grievance be mindful of the need to maintain the privacy of grievance proceedings and the confidentiality of information reviewed and provided during such proceedings. Maintaining the privacy of the proceedings, to the fullest extent permitted by law, is important to ensure an unencumbered resolution and promote the integrity of the process. Maintaining the confidentiality of information and documentation also may be legally required. Certain information addressed during grievances, particularly involving students, medical issues, or confidential financial information, may be protected from disclosure as a matter of federal, state, or local law. The sharing of protected private information in non-permitted circumstances may raise issues of legal liability for the individual as well as the College; questions about maintaining the privacy and confidentiality of information may be addressed to the General Counsel.

v. **Legal Rights.**

Nothing in this Procedure is intended to limit a grievant's or an instructional staff member's rights under applicable law. It is hoped, however, that community members will first seek to resolve grievances using College

Procedures, including this Procedure when applicable.

vi. Extension of Timelines.

This Grievance Procedure is intended to achieve full, fair, and efficient resolution of grievances against instructional staff. It includes timelines intended to ensure that disputes are resolved fairly and efficiently. As an ordinary measure, any timeline that is not explicitly stated within the Grievance Procedure will be determined by the Equal Opportunity Officer, the Provost and Dean of the Faculty, or their designee(s). Any timeline that expires on a weekend or a College-recognized holiday, will be automatically extended to the next business day. Also, Grievance Committee procedures are not intended to operate during academic breaks and timelines will be adjusted accordingly. In extraordinary circumstances, and to promote a full and fair resolution, the Grievance Procedure Committee Chair in consultation with the President or designee has the discretion to extend timelines, including without limitation: (i) where a grievance is filed shortly before a term break or summer break; (b) where a grievance involves multiple parties or complicated facts; (c) where a grievance requires investigation or sequencing of multiple Procedures applicable under the College's Title IX Policy, Notice of Non-Discrimination, or other policies; or (d) where a party may be experiencing extenuating circumstances that support a request for extension of time. Any extension will be confirmed in writing to the Grievance Procedure Committee, the involved parties, the Provost and Dean of the Faculty, and COFP. Extensions will only pertain to the particular grievance and do not serve as a general amendment to this Grievance Procedure. In the event that the Grievance Committee has not yet been formed, the President or designee has the sole discretion to extend timelines until the Grievance Committee is established.

II. PHASE ONE: INFORMAL RESOLUTION AND EARLY INTERVENTION

If any community member has a concern with a faculty member that cannot first be addressed informally by making a reasonable effort to discuss the situation with the faculty member, the community member should seek support by discussing the concern with any of the following responsible College representatives:

- An academic Department, Program or Division Chair
- Provost and Dean of the Faculty Tomoko Sakomura, tsakomu1@swarthmore.edu, (610) 328-8119, Parrish Hall E228S
- Equal Opportunity Officer - Paula MacDonald, Assistant Vice President, Human Resources, pmacdon1@swarthmore.edu, (610) 690-5667, 101 South Chester Road 116

During the informal resolution phase, the designated College representative(s) will provide information about applicable policies, resources and personnel. Options for resolving

the concern, whether informally or through the Grievance Procedure, will also be explained. As appropriate, the College representative or designee(s) may offer and facilitate methods aimed at an informal resolution between the parties, such as facilitated discussion, mediation, or conciliation between the parties to the concern. The College representative may also recommend any reasonable changes, limitations, or other interventions that are agreed upon by the parties and that are aimed at informally resolving the concern. Such interventions may include, but are not limited to, placing contact restrictions, reassignments, relocations, etc.

If informal methods of resolution do not resolve the concern, failed attempts to resolve the concern through Phase I informal methods will not preclude the initiation of the remaining phases of the grievance procedure, which requires further attempts at consultative resolution except in grievances based on protected class discrimination, harassment, or retaliation (as described in the Introduction at I.C.i. above).

III. PHASE TWO: THRESHOLD REVIEW; CONSULTATIVE RESOLUTION

A community member who requests formal review of a concern or grievance against an instructional staff member under this Grievance Procedure, must do so by informing a designated College representative. Before formal review begins under this Grievance Procedure, the Equal Opportunity Officer in consultation with the Provost and Dean of the Faculty will determine through threshold review how the grievance should be addressed; whether the grievance can be resolved consultatively; should be addressed under this Procedure; addressed using some other Procedure and/or should be preceded by an investigation. As part of the threshold review, it will be determined whether the grievant has, when required, attempted or engaged in a consultative resolution process, defined in III.B. below, before beginning a Formal Grievance Procedure.

Parties are expected to participate in these threshold steps, as well as to refrain from retaliation, not only during preliminary attempts to resolve grievances but also during any formal grievance proceedings. Good faith, respectful conduct during all phases of this process, beginning with the consultative resolution process, is central to this Procedure. It is expected of all participants, and it is consistent with the College's culture, mission, and values.

A. College's Threshold Review.

When concerns about instructional staff members arise, it is important for the Equal Opportunity Officer to evaluate, as soon as possible, whether the concern or grievance raises issues that should be addressed under this Procedure or another College policy (such as the Title IX Policy). If the Equal Opportunity Officer determines that the concern should be addressed under this Procedure, the Equal Opportunity Officer will first assess whether the concern or grievance requires an investigation and fact-finding pursuant to the College anti-discrimination policies and protocols before it is reviewed under this Procedure. This threshold review will be conducted as soon as administratively possible but not more than 30 calendar days after the Equal Opportunity Officer, the Provost and Dean of the Faculty or a Department, Program or Division Chair becomes aware of the request for formal review of the grievance or concern.

Instructional and other staff should therefore advise the Equal Opportunity Officer about grievances, as soon as learning about them, so that the Officer may make a timely determination on behalf of the College about which policies and protocols apply to the particular issue. The Equal Opportunity Officer should also be informed of all prior resolution efforts, not only to ensure that a timely threshold review occurs but also to help facilitate any remaining consultative resolution options.

In particular, as a result of the threshold review process, or at any time during a Grievance Procedure, the College may determine that a formal investigation of discrimination, harassment, or retaliation claims by trained investigators should be initiated to ensure a full and effective grievance resolution and to fulfill the College's commitment and legal obligations to eliminate discrimination and harassment when found. The Equal Opportunity Officer will confer with the Provost and Dean of the Faculty or their designee and may consult with other College representatives (e.g. Department, Program and/or Division Chairs) in making this determination, which is reserved to the College's sole discretion. In such circumstances, timelines are likely to be extended pursuant to I.E.vi. above. The investigation is designed to be a gathering of the facts without containing any findings of policy violation or recommendations for outcome. Should such a formal investigation precede the Grievance Procedure as such, the Grievance Committee accepts and uses these findings of fact to prepare its recommendation to the President or designee as to whether misconduct has occurred that falls within the scope of this Grievance Procedure and, if so, whether interventions or sanctions are recommended. In the event that there was no formal investigation prior to the start of the Grievance Procedure, the Committee is allowed to ask for such an investigation should that be deemed necessary. In that case, see Section I.E.vi. above for extension of the timeline.

During the threshold review, the Equal Opportunity Officer, the Provost and Dean of the Faculty or their designee, will discuss with the individual who raised the concern, the steps of the Grievance Procedure, including consultative resolution (pursuant to III.B). At the conclusion of the threshold review, the Equal Opportunity Officer, the Provost and Dean of the Faculty or their designee, will notify the individual of the outcome of the threshold review and will review the next steps of the Procedure.

B. Consultative Resolution

i. The College's Commitment to Consultative Resolution.

Prior to initiating the Grievance Procedure, a member of the community who asserts a grievance under this Procedure is required to make timely and good faith efforts to resolve the grievance through consultation under this section, without first resorting to the Formal Grievance Procedure, unless the grievance is based on protected class discrimination, harassment, or retaliation (as described in I.C.i above). A grievant with a concern that is based on protected class discrimination, harassment, or retaliation is encouraged, but is not required to pursue consultative resolution. If a grievant of a concern that is not based on discrimination, harassment or retaliation fails to initiate and participate in good faith

in a consultative resolution under this Section, the College may decline to review a formal grievance and the grievance may be terminated (as further set forth in Sections IV.F.iii below).

ii. Steps.

Before filing a formal grievance, among the consultation steps that may be appropriate are: making a reasonable effort to discuss the situation with the faculty member; discussing the concern with the Department, Program, or Division chair, or an Associate Dean for support, any of whom will consult the Provost and Dean of the Faculty and/or Equal Opportunity Officer; or the Provost and Dean of the Faculty. The grievant may also consult the Equal Opportunity Officer at any time, informally and privately, about the Grievance Procedure and/or about any means available for mediation, conciliation, or investigation of a grievance, regardless of whether the grievance raises claims of discrimination, harassment, or retaliation.

iii. Timeline for Consultative Resolution.

Consultative resolution is most effective when it is initiated as soon as possible after the incident in question has occurred or the concern in question has arisen. The College representative notified of the grievance, the Equal Opportunity Officer, or another College-designated representative(s) will then, over the next 30 calendar days, work with the grievant and respondent to seek a consultative resolution. Timelines applicable to consultative resolution may only be extended pursuant to Section I.E.vi. above. Consultative resolution steps may begin during the College's threshold review, when possible.

iv. Scope and Nature of Process.

The scope and nature of a consultative resolution process will depend upon the nature of the concerns at issue. At the College's discretion, the consultative resolution process may involve meetings with the grievant and respondent, together or separately, as well as review of relevant documents and consultations with College representatives who have knowledge of the circumstances. The decision to have any joint meetings should always be left up to the grievant. Though confidential, the consultative resolution process should be informal and should never be adversarial. In its discretion, the College may engage a College or outside mediator or dispute-resolution professional of its choosing to facilitate a resolution during the consultative resolution stage.

v. Resolution.

Any resolution achieved through the consultative process should be memorialized in writing, with copies provided to both grievant and respondent (and any other College representative needing to know of the resolution). The written memorialization is then to be maintained as confidential within the office of the Provost and Dean of the Faculty and within the Equal Opportunity

Officer's records.

IV. PHASE THREE: FORMAL GRIEVANCE PROCEDURE AND COMMITTEE RECOMMENDATION

A. Initiation of a Written Grievance.

A grievant who has failed, despite timely and good-faith efforts, to resolve that grievance consultatively as set forth in Section II.B. above may invoke the Formal Grievance Procedure, which begins with the filing of a written grievance under this Section. The grievant should file any such grievance, if this Procedure is applicable, within 14 calendar days after the 30-day consultative resolution process has ended or been terminated.

The first point of contact under this Section IV should be either the Equal Opportunity Officer, or the Provost and Dean of the Faculty. A written grievance may be filed with either individual.

The Formal Grievance Procedure may only be initiated through the filing of a written grievance, which should include the following:

- i. A statement detailing steps taken by the grievant(s) to resolve the grievance through consultative resolution and the date upon which the consultative resolution process ended; and
- ii. A statement of the particulars of the grievance, including a detailed description of the grievance itself and allegations with respect to the act or acts constituting the grievance and the person or persons responsible for those acts; and one or both of the following:
- iii. A statement as to whether and how the grievance raises any claims of discrimination, harassment, or retaliation under the College's [Notice of Non-Discrimination](#). See Section I.C.i above;
- iv. A description of the manner in which the grievant believes the conduct or decision constitutes substantially unfair conduct as set forth in Section I.C.ii above.

B. Preliminary Review.

Upon receipt of the written grievance, the Equal Opportunity Officer and the Provost and Dean of the Faculty, or their designees, will consult about the timing and logistics of next steps and about whether the written grievance can be addressed by the Formal Grievance Procedure, requires a prior investigation, or should be addressed using a different procedure. The grievant and respondent will be informed in writing of the outcome of this preliminary review and about how the grievance will be addressed with regards to timing and logistics. If a prior investigation is required,

timelines are likely to be extended pursuant to Section I.E.vi above.

C. Notice to Respondent and Filing of Response.

Within 14 business days after receipt of the written grievance, the Equal Opportunity Officer, or Provost and Dean of the Faculty will share a copy of the written grievance with the respondent. The respondent may submit a written response to the attention of the Equal Opportunity Officer as well as Provost and Dean of the Faculty, within 30 calendar days of receipt, subject to any extensions granted under Section I.E.vi. above.

Both the grievant and respondent may consult with other members of the College community, strictly on a confidential basis, where the party reasonably believes that those other College representatives have information pertinent to preparation of the written grievance or response. Such consultations must adhere to the principles of good faith participation and respect privacy and confidentiality to the extent permitted by law, described in Section I.E.iv above.

D. Convening the Grievance Committee.

Upon receipt of the written grievance and response from the respondent(s), the Equal Opportunity Officer, or Provost and Dean of the Faculty will notify the COFP in writing of the formal grievance and include a copy of the grievance and the written response of the respondent(s). Within 14 calendar days after receipt of notice, the COFP will review the steps taken to date and, satisfied that the proper process has been followed, appoint a committee of an uneven number of faculty members (“the Grievance Committee”), all of whom will be tenured professors and none of whom have a conflict of interest as defined below. COFP will appoint one of the Grievance Committee members as chair or two as co-chairs.

The grievance and response(s) will be shared with the Grievance Committee as soon as it is selected. The selection of individuals for the Grievance Committee will be shared in writing by COFP with the parties (and the Provost and Dean of the Faculty) as soon as the selection occurs. If a grievance is filed near or during a term or summer break, the COFP may seek an extension of this timeline from the President or designee under Section I.E.vi. above, which extension shall be freely granted.

E. Conflict of Interest.

It is not per se a conflict of interest for a committee member to know a party, be friendly with one of the parties, or serve on committees or in a department with one of the parties. However, a potential committee member may be conflicted out for a particular grievance (a) if the committee member has voted or been involved in a decision being challenged; (b) if the committee member is a current or former spouse, domestic partner, close relative, or household member of a party or shares a financial interest with a party; (c) if the unique circumstances under review are such that the committee member is not impartial or is perceived as not being impartial; or (d) if the committee member or the chair of the committee believes they cannot be impartial. If a party has such a concern about any of the Committee members selected, that party should inform the Grievance

Committee Chair in writing within 5 calendar days after being notified of the Committee selections. Committee members may also bring concerns to the attention of the Chair within 5 calendar days after COFP appoints the Committee. The Committee member may recuse themselves from service or the Committee may vote to recuse the member in question. This preliminary process, with substitutes to be appointed by COFP as needed, should be completed within 14 calendar days after notice of the Grievance Committee members is sent from COFP to the parties.

F. Committee's Review of Good Faith Efforts and Sufficiency of Grievance.

Following the Preliminary Review (Section IV.B), the Grievance Committee should immediately review the two threshold issues: (a) whether, under the provisions of Sections I.E.i and III.B above, the grievant failed to make good-faith efforts to resolve the grievance through the consultative resolution process prior to invoking the Grievance Procedure; and (b) whether the grievance identifies one or more issues that, if substantiated, may reasonably be found to constitute discrimination, harassment, or retaliation and/or substantial unfairness, which are the two grounds for grievance defined in Section I.C above.

i. Grievance substantiated

If the Grievance Committee finds that the requirements in IV.F.i were met, it will notify the grievant and respondent(s) in writing that the grievance has been substantiated and will proceed to formal review beginning at Section IV.H.

ii. Further attempts at Consultative Resolution

At any point the Grievance Committee, on its own initiative or in response to the parties, may recommend to the parties and Equal Opportunity Officer that further efforts at conciliation or mediation be attempted, and the Committee may suspend the process during any further consultative resolution attempts. Engaging in additional consultative resolution does not extend the timeline for completion of the Formal Grievance Procedure, which may only be extended pursuant to Section I.E.vi. above.

iii. Termination of the Grievance.

If the Grievance Committee finds that either of the requirements in IV.F.i were not met, it will notify the grievant and respondent(s) in writing. Both grievant and respondent will have an opportunity to respond in writing within five (5) calendar days. If the Grievance Committee concludes after review of any such response(s) that the requirements for pursuing a formal grievance have not been met, it will notify the parties in writing (with copies to the President or designee, Provost and Dean of the Faculty, and Equal Opportunity Officer) that it is terminating the Grievance Procedure. The Committee's termination decision

is subject to Procedural Review under Section VI. below.

G. Communications with Parties.

During all phases of the formal process, the Grievance Committee may proceed in private as it deems best, subject to its responsibility to communicate with the parties in a timely and parallel fashion. The Grievance Committee will, if necessary, resolve by majority vote any issues relating to Procedure or its final recommendation; the Chair will resolve any tie votes arising from abstention. The College's General Counsel may be available to the Committee for consultation about procedural issues, upon request to and approval by the President or designee, but counsel does not participate in this process as an advocate for either party. The Grievance Committee may consult with or interview whomever it reasonably believes to have knowledge about the grievance in reaching its recommendation. However, if the Committee meets with one party, it must also offer to meet with the other party in an equitable and parallel manner. All written communications by the Grievance Committee to one party must be copied to the other, and everything submitted by one party to the Grievance Committee (including emails, documents, and supporting information) must be copied to the other party, unless prohibited by law (e.g, HIPAA laws). The parties' opportunities to submit information and be heard should be parallel.

H. Procedures for Review of Grievance and Preparation of Recommendation.

Once the Grievance Committee determines that the grievance is substantiated, it should proceed to review the grievance and prepare a recommendation for final action by the President or designee as follows:

- i. The Committee should consider all pertinent information submitted by grievant, respondent(s), or witnesses, as well as documents pertinent to the grievance. The Grievance Committee may request additional statements or information from the parties and may seek to confer with parties and witnesses. The Grievance Committee may make reasonable requests of the College for documents, including electronic communications, that are deemed pertinent, which the College will produce at its discretion.
- ii. This is a review performed by academic colleagues, not a legal proceeding. The Grievance Committee need not adhere to rules of court evidence but should be sensitive to privacy issues and should limit its review to matters raised by the grievant. The Committee's recommendation to the President or designee should be limited to resolution of the particular grievance.
- iii. If a grievance includes discrimination, harassment, or retaliation claims that were previously the subject of an fact-finding investigation, the Committee will accept and honor the findings of fact for purposes of the grievance and will not repeat or seek to review the investigation of the facts pertinent to the claims or question the facts found. The grievance process will instead focus upon whether the findings demonstrate inappropriate conduct by the respondent that may be

appropriate for intervention or sanctions.

- iv. If a grievant seeks to significantly amend their grievance during a Formal Grievance Procedure, the grievant should file a new written grievance as set forth above; at the discretion of the President or designee, the new grievance will again be screened for sufficiency and may be remanded for consultative resolution. It may be handled separately, consolidated with the ongoing grievance, or terminated if insufficient under the standards of this Grievance Procedure. The filing of a new grievance or an attempt to amend a grievance will not extend the timeline for completing a grievance, unless the timeline is extended as set forth in Section I.E.vi. above.
- v. The College administration will provide reasonable assistance with regard to the provision of information and will help facilitate planning and the attendance of witnesses to the extent practicable.
- vi. The Grievance Committee may, at any time it deems appropriate, exclude from meetings any or all other persons and may deliberate in private, provided that both parties are provided equal access to information and are provided equal opportunity to attend meetings to which witnesses are invited. Only the Grievance Committee may confer directly with parties or witnesses during Formal Grievance Procedure meetings; even if present, parties are not entitled to question each other or witnesses. At all meetings, parties and their support persons must conduct themselves in a strictly collegial and respectful manner.
- vii. At the request of either party or the Grievance Committee, or at the President or designee's discretion, a College administration representative may also be designated by the President or designee to attend meetings with the parties or witnesses, as long as the representative is not also serving as a witness to the matter in question.
- viii. The deliberations of the Grievance Committee and meetings held by the Grievance Committee with parties or witnesses must be concluded within 60 calendar days after the COFP notifies the parties of the final selection of the Grievance Committee, unless the timeline is extended as set forth in Section I.E.vi. above.
- ix. All participants in the process are expected to respect the privacy of meetings, communications with parties, information adduced for purposes of these meetings, including witnesses and support person.
- x. At any point in its proceedings the Grievance Committee, on its own initiative or in response to the parties, may recommend to the parties and Equal Opportunity Officer that further efforts at conciliation or mediation be attempted, and the Committee may suspend its proceedings during this period. Neither this nor an attempted amendment of the grievance extends the timeline for completion of the Formal Grievance Procedure, which may only be extended pursuant to Section I.E.vi. above.

- xi. Before preparing and submitting its final Recommendation to the President or designee, the Grievance Committee may, but need not, permit both grievant and respondent(s) to submit brief, final written statements summarizing their positions.

I. Final Recommendation.

After the Grievance Committee has received and considered all of the information it deems relevant to the pending grievance, and no later than 60 calendar days after the Committee is convened, the Committee will prepare and transmit a final recommendation to the President or designee, advising them as to the recommended resolution of the formal grievance. The Grievance Committee's recommendation will summarize the information considered and identify the individuals with whom the Committee met; the recommendation will provide a reasoned explanation of the Grievance Committee's recommendations with respect to the merits of the grievance. The Grievance Committee may, depending upon the circumstances and its recommendations, also offer recommendations for disposition of the grievance, for interventions or sanctions, or for dealing with the circumstances that gave rise to the grievance.

Copies of the Grievance Committee's recommendation shall be transmitted to the grievant, the respondent(s), the elected members of COFP, the Provost and Dean of the Faculty, and the Equal Opportunity Officer, as well as to the President or designee. The President or designee is the final decision-maker. Either party to the grievance may initiate a Procedural Review within 14 calendar days after the Grievance Committee's final recommendation is transmitted to the President or designee, as detailed in Section V below. The President or designee may issue temporary measures, as determined by the President or designee in their sole discretion, but will not issue a final decision in the matter until the period for Procedural Review has lapsed.

V. POTENTIAL OUTCOMES, INCLUDING INTERVENTIONS AND SANCTIONS

A. Goal in Imposing Interventions or Sanctions.

The options available to the College for the resolution of a grievance against a member of the instructional staff are varied and depend upon the nature of the alleged behavior, the Committee's findings and recommended outcomes (if any), and the President or designee's final decision upon the grievance. Restoration of a healthy learning and working environment is the goal to be achieved, if possible; resorting to formal sanctions may not be the most effective means to achieve that end. In other cases, formal sanctions may be required to take corrective action and to deter future infractions. In this context, formal sanctions can also be viewed as consistent with restoration of a healthy learning and working environment.

B. Discretion of Committee and of Final Decision-Maker.

Depending upon its findings, the Committee's final recommendation may, at its discretion, include recommendation of possible interventions or sanctions, which are

not limited to those discussed below or in other College policies and Procedures. The Committee also has the discretion, when appropriate, to decline to recommend interventions or sanctions.

The President or designee as final decision-maker then has the sole discretion to accept or reject the Committee's recommended outcome and any recommended interventions or sanctions; the President or designee may also impose modified sanctions as the President or designee deems appropriate to the circumstances or impose interventions or sanctions where the Committee recommends against further action or is silent on the question of consequences. The President or designee will, however, carefully consider the recommendations of the Committee both as to the merits of the grievance and as to any recommended sanctions or interventions before a final decision upon the grievance is rendered.

C. Examples of Interventions or Sanctions.

Interventions short of formal sanctions may, as noted, be effective and most desirable in the first instance. For example, mandatory training or other educational efforts might be an appropriate outcome. Less drastic operational interventions might also be appropriate, such as relocating faculty to different offices. Other interventions or sanctions may also include, without limitation, adjustments in the working expectations of instructional staff in response to the resolution of a grievance; withdrawal of staff from future personnel decisions regarding an individual, a department or a program; restrictions upon instructional staff service on particular committees or in specific roles within the College; restrictions regarding future teaching assignments or modes of interaction with students; or no-contact or avoidance measures that continue in place beyond the resolution of the grievance.

Depending upon the significance or persistence of the conduct at issue, additional interventions and/or more formal sanctions may be appropriate, particularly for situations in which educational or operational efforts may not be effective or sufficient. Additional sanctions may include the following examples, but this is not an exhaustive list: oral reprimand; written reprimand; restitution (for instance, payment for property damage due to individuals or to the institution); loss of prospective College support for a stated period (for instance, suspension of increase in salary for a stated period; denial of privileges, such as second semester sabbaticals or research funding; or suspension from service on the instructional staff for a stated period, with or without pay).

D. Termination of Appointments as Sanction.

In the circumstance in which a member of the instructional staff is found to have behaved in a manner that is sufficiently unprofessional to constitute "serious shortcomings" as defined in Section III.A.14 of the College's *Handbook for Instructional Staff*, the College may initiate proceedings for termination of appointments under Section III.A.14 of the *Handbook for Instructional Staff*.

VI. PROCEDURAL REVIEW OF GRIEVANCE COMMITTEE TERMINATION OR FINAL RECOMMENDATION BEFORE FINAL DECISION

A. Grounds for Procedural Review.

Recommendations made by the Grievance Committee may be subject to review and resolution by the COFP, before the President or designee makes a final decision, under two circumstances:

i. Review of Termination of Grievance Process.

The grievant may request a review of the Grievance Committee's termination of a Grievance Procedure pursuant to Section IV.F.iii. above, which shall be filed with the elected members of COFP within 14 calendar days after the grievance has been terminated on this basis; or

ii. Review of Final Recommendation.

The grievant or respondent may request review of the Grievance Committee's final recommendation, before the President or designee makes a final decision, on one or more of the following limited grounds: (a) new information exists that would be likely to change the recommendation of the Grievance Committee and that was unavailable during the Grievance Procedure; (b) the Formal Grievance Procedure included procedural error(s) that had a material impact on the Grievance Committee's recommendation; or (c) the Grievance Committee has made intervention or sanction recommendations to the President or designee that are grossly disproportionate to the severity of the conduct substantiated. Disagreement with the Grievance Committee's recommendation is not a basis for review. A request on this basis must be filed with the elected members of COFP within 14 calendar days after the parties to the grievance are notified of the Grievance Committee's final recommendation.

COFP will consider the merits of a written request for procedural review only on the basis of the three (3) grounds for procedural review as described by the requestor in their written request for procedural review and the record of the formal grievance procedure. COFP can affirm the Grievance Committee's final recommendation, amend the Grievance Committee's final recommendation, and/or revise the recommended interventions or sanctions, if any, depending on the basis of the requested ground for procedural review. If the request for procedural review is granted based on procedural error(s) that materially affected the Grievance Committee's final recommendation, COFP will return the case to the Grievance Committee for additional review or forward the case for a new review, which may (at COFP's discretion) be heard by a newly constituted Grievance Committee.

In the case of new and relevant information, COFP can recommend that the case be returned to the Grievance Committee for them to assess the weight and effect of the new information and render a recommendation after considering the new facts.

B. Requirements for Filing for Review.

If procedural review is sought on either ground, a written request should be directed to the COFP, with copies of the request also sent by the requesting party to the Grievance Committee, President or designee, Provost and Dean of the Faculty and EO Officer, as well as to the other party to the grievance. The non-requesting party may file a response to the request with the elected members of the COFP within three calendar days after receiving the request for procedural review (again, copying the opposing party and the College representatives copied upon the original request for review). Any request for procedural review must be made concisely and in writing no later than 14 calendar days of receipt of the termination notification or the Committee's final recommendation (as the case may be). A request for review will be resolved by the COFP in writing (with copies to the parties, as well as the Grievance Committee, President or designee, and Provost and Dean of the Faculty and EO Officer) within 14 calendar days after COFP receives the request.

In any such procedural review, the burden of persuasion is upon the party petitioning for procedural review as the Committee's termination determination or final recommendations are presumed to have been decided reasonably and appropriately. The procedural review is not a new review of the underlying grievance.

C. Procedural Review Outcomes.

If a procedural review of a termination affirms the Grievance Committee's termination (Section VI.A.i. above), the grievance is concluded; if the COFP reverses the Committee's termination decision, the grievance will be remanded to a new Grievance Committee for further action. Regarding procedural review of a final recommendation (Section VI.A.ii above), the COFP's findings will be forwarded to the President or designee, along with the Grievance Committee's Final Recommendation, to be considered as part of the President or designee's decision upon the grievance. The decision of the President or designee is final.

VII. POLICY REVIEW

As a living document that is bound to have to adjust to new legal landscapes along with new grievance cases, this policy should be reviewed and, if necessary, updated by a faculty committee in another three to five years.