

# **2022-2023**

## **Interim Procedures for Resolution of Title IX Complaints against Staff and Faculty**

*Note: The College is required to be compliant with current federal regulations, therefore, these policies and procedures will govern, on an interim basis, the College's response to complaints and the grievance process for staff and faculty until such time as a more fulsome, collaborative, and federally compliant policy/procedure is finalized.*

### **I. Scope**

The Title IX and College-Defined Sexual Misconduct Policy (the “Policy”) applies to all members of the College community, including students, employees, volunteers, independent contractors, visitors or any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity at the College. For a complete discussion of the scope, please see the Policy.

These specific procedures apply to complaints of Title IX-covered conduct against staff and faculty. The procedures addressing College-defined sexual misconduct are discussed in Procedures for College-Defined Sexual Misconduct Complaints Against Staff and Faculty. This includes regular full-time, part-time, limited term, and temporary staff, including those in their orientation period, and full-time, part-time faculty and other instructional staff members of the College, whether or not appointed to regular faculty rank. For a complete description of behavior that constitutes College-defined sexual misconduct and Title IX-covered conduct, please see the Policy.

Procedures for complaints against students are set forth in the Procedures for Resolution of Title IX Complaints Against Students and the Procedures for Resolution of College-Defined Sexual Misconduct Complaints Against Students.

### **II. Reason for Differentiation between Title IX Conduct and College-Defined Sexual Misconduct**

On May 19, 2020, the U.S. Department of Education issued regulations under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence) under Title IX,

- Addresses how institutions must respond to reports of conduct falling within that definition of sexual harassment, and
- Mandates procedures that institutions must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The definition of “sexual harassment” under Title IX does not cover all of the conduct the College has traditionally addressed under our previous *Sexual Assault and Harassment Policy*. Swarthmore College remains committed to addressing conduct that we have traditionally viewed as violating our community standards, that now does not fall within the definition of “sexual harassment” under Title IX, by providing procedures for College-defined sexual misconduct.

To be clear, the College has not narrowed the range of behavior that can be addressed under this revised *Title IX and College-Defined Sexual Misconduct Policy*. In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the new Title IX regulations, the College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Title IX definition of sexual harassment must be adjudicated through a live hearing compliant with the procedures required under Title IX. To the extent that the alleged misconduct falls outside the scope of Title IX, the College retains authority to investigate and adjudicate the allegations under the policies and procedures for College-defined sexual misconduct.

Finally, our existing Title IX Office and reporting structure remains in place. What has changed is which procedures apply to different types of reports arising from sexual misconduct, but not the support and resources available to our community members. We remain here to help.

### **III. Procedural Options**

As outlined in the Reporting section of the Policy, any individual who wishes to make a report of prohibited conduct is encouraged to make a report directly to the Title IX coordinator. In every report of prohibited conduct, the Title IX coordinator, through the coordinated efforts of the Title IX team, will conduct an initial report assessment. At the conclusion of the report assessment, if appropriate, the report will be referred for either adaptable remedy or investigation. Adaptable remedy does not involve disciplinary action against a responding party. An investigation gathers the facts of the case and this information is used to determine whether a violation of the Policy is

more likely than not to have occurred based on a preponderance of the evidence standard. A determination of a policy violation will result in College action leading to disciplinary measures up to and including dismissal.

Supportive measures will be offered and may be used to ensure the integrity of any stage of the process and to protect the safety of all parties and the College community.

College employees can also seek confidential assistance, which does not constitute notice to the College, through Carebridge, the College's Employee Assistance Program. Carebridge is available 24 hours a day, 7 days a week by calling 1-800-437-0911. For other supportive and confidential resources, please check the Policy.

#### **IV. Report Assessment**

- A. **Initial Assessment.** Upon receipt of a report under the Policy, the Title IX coordinator, through the coordinated efforts of the Title IX team, will conduct a timely initial assessment. The Title IX team is flexible in composition based on the relationship of the parties to the College (student, staff, faculty), and the Title IX coordinator is responsible for assembling the Title IX team. All members of the Title IX team are trained in policy and procedure. When a member of the faculty is involved, the Title IX team will include the provost or designee. Depending on the relationship of the parties to the College (student, staff, faculty, or other) and the nature of the circumstances of the report, the Title IX coordinator will consult with others as appropriate, such as the director of equal opportunity (a deputy Title IX coordinator) when assessing a report that also involves an implication of harassment based upon other protected classes or has other employment implications. In all cases, the team will be limited in number and information will only be shared on a "need to know" basis.

The report assessment is designed to carry out the goals of Title VII (as it applies to discrimination based on sex), Title IX, the relevant portions of the Clery and the Violence Against Women Acts, and College policy. The first step of the assessment will usually be a preliminary meeting between the reporting party and the Title IX coordinator or another member of the Title IX team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full fact-gathering interview. At this meeting, the reporting party will be provided with information about resources, procedural options, and supportive measures. During this initial review, based on the information available at that time, the Title IX team member(s) will make an assessment of the safety of the individual and of the campus community.

The Title IX team will also consider the interest of the reporting party and their expressed preference for the manner of resolution. Where possible and as warranted by an assessment of the facts and circumstances, the College will seek to proceed in a manner consistent with the reporting party's request.

As part of the initial assessment of the facts, the Title IX coordinator, in collaboration with the Title IX team, will:

- assess the nature and circumstances of the allegation;
- address immediate physical safety and emotional well-being of the reporting party;
- provide the reporting party with a written explanation of their rights and options, including:
  - the right to report, or decline to report, the incident to law enforcement if the conduct is potentially criminal in nature. The College has personnel who are available to assist in this process;
  - the right to obtain a “no-contact directive” from the College;
  - the right to and importance of seeking medical treatment to address physical health and to preserve evidence;
  - the right to file a complaint through the applicable internal complaint resolution process, to receive an explanation of the process and of the obligation to provide a prompt, fair, and impartial investigation and resolution, and to receive an explanation of the potential remedies for victims, potential remedies for the College community, and possible sanctions against responding parties;
  - notify the reporting party of the range of interim measures and remedies, including options for changes in living, academic, transportation, working situations;
  - provide the reporting party with information about on- and off-campus resources, including support options;
  - obtain the reporting party's expressed preference for the manner of resolution and assess any barriers to proceeding;
  - share that each party is entitled to have an advisor of their own choosing, as desired;
  - determine if concerns exist for discrimination or harassment based on other protected classes;
  - explain the College's policies for confidentiality and prohibiting retaliation, as described in the Policy;
  - assess the reported conduct for the need for a timely warning under federal law;

- determine if pattern evidence or other similar conduct by responding party exists;
- enter non-identifying information about the report into the College's daily crime log if the report includes a Clery-reportable crime;

In cases involving a faculty member, the Title IX coordinator will consult with the provost, who will determine if any issues of academic freedom are involved. In cases where academic freedom is at issue, the provost (or designee) will confer with the Committee on Faculty Procedures to determine how academic freedom should factor into a Title IX assessment, as described in Special Provisions for Faculty section within these procedures.

The Title IX team will take all reasonable steps to respond to a complaint consistent with a reporting party's requested outcome, but its ability to do so may be limited based on the nature of their request. Where a reporting party requests that a name or other identifiable information not be shared with the responding party or that no formal action be taken, the College will balance this request with its responsibility to provide a safe and non-discriminatory environment for all College community members and to afford a responding party a balanced and impartial process.

In the event that a reporting party does not wish to proceed with formal action, the Title IX coordinator, in consultation with the Title IX team as necessary, will decide, based on the available information, whether additional steps are appropriate. In making this decision, the Title IX team will consider, among other factors, whether the reporting party has requested confidentiality; whether the reporting party wants to participate in additional steps; the severity and impact of the sexual misconduct; the respective ages of the parties, including whether the reporting party is a minor under the age of 18; whether the responding party has admitted to the prohibited conduct; whether the responding party has a pattern of committing such conduct; the existence of independent evidence; the extent of prior remedial methods taken with the responding party; and any legal obligation to proceed based on the nature of the conduct.

At the conclusion of the report assessment, the Title IX coordinator, in collaboration with the Title IX team, will determine whether or not to refer the report for adaptable remedy or for investigation to determine whether to pursue disciplinary action.

This determination will be communicated to the reporting party in writing. The Title IX coordinator or a member of the Title IX team will discuss the determination with the reporting party and provide information to assist in understanding available resources and procedural options.

The responding party will be notified in writing when the College seeks action that would impact a responding party, such as protective measures that restrict the responding party's movement on campus, the initiation of an investigation or the decision to involve the responding party in an adaptable remedy.

- B. Non-Retaliation. The College will inform the reporting party and the responding party that retaliation is prohibited by law and College policy and that the College will take strong responsive action to protect the safety of any individual. Retaliation will not be tolerated and will result in disciplinary action.
- C. Dismissal of a Formal Complaint under Title IX. If a reporting party is seeking to file a formal complaint under Title IX, and it is clear after the report assessment that any of the below reasons exist, the formal complaint will be dismissed under Title IX and the reporting party will receive written notice of the dismissal, the reason for the dismissal, and a description of any other applicable processes that may address the alleged conduct.
  - i. If it is determined that the alleged conduct would not constitute Title IX-covered behavior, even if proven, the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.
  - ii. If the alleged conduct did not occur against a person in the United States, then the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.
  - iii. If the alleged conduct did not occur on the College's campus or as part of a College education program or activity, then the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.
  - iv. The College may dismiss a formal complaint under Title IX when the complainant provides the Title IX Coordinator with a written request to rescind the formal complaint.
  - v. If a respondent is no longer employed at the College after a formal complaint has been filed, the College may continue the formal complaint process to the extent possible and practicable in light of all the circumstances at that time. The complainant will be informed about their options, which may include proceeding with the formal complaint process or rescinding the formal complaint as described above.

- vi. If specific circumstances prevent the College from gathering evidence sufficient to reach a determination on the formal complaint, then the College may dismiss the formal complaint.

## **V. Supportive Measures**

- A. Overview. Upon receipt of a report of prohibited conduct, the College has the responsibility to ensure the integrity of the assessment, resolution and/or investigative processes and to protect the safety of all parties and the broader College community. To meet these goals, the College will offer supportive measures to the parties and may take reasonable and appropriate measures designed to eliminate the reported hostile environment and protect the parties involved.

The College will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed. Supportive measures may be imposed regardless of whether formal disciplinary action is sought by the reporting party or the College. The imposition of such measures assumes no determination of responsibility.

The parties may request contact restrictions or other protection, or the College may choose to impose supportive measures at its discretion to ensure the safety of all parties, the broader College community, and/or the integrity of the investigative and/or resolution process.

Supportive measures that do not impact the responding party (such as referral to emotional counseling or academic support for the complainant) will be decided by the Title IX coordinator in consultation with other relevant administrators.

The responding party will be notified in writing of a supportive measure that impacts them and the nature of the allegations that have led to this action.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

If at any point following the receipt of a report of prohibited conduct, the College determines that the responding party poses an immediate threat to the physical health or safety of the reporting party or any other person(s), including the respondent, the College may immediately and temporarily remove the responding party from any or all of its programs or activities. The imposition of an emergency removal does not suggest a

finding of responsibility for any prohibited conduct. Please see the Policy for a description of the emergency removal process.

B. Range of Supportive Measures for Employees. Supportive measures that may be implemented include, but are not limited to:

- providing an escort to ensure safe movement on campus;
- providing medical services to students or contacting EMS services for employees and others;
- student access to counseling services and assistance in setting up an initial appointment, on and off campus; or employee access to the Employee Assistance Program—Carebridge referral to the Delaware County Women Organized Against Rape, The Mazzone Center, or other supportive resources;
- imposition of an on-campus “no-contact directive”;
- rescheduling of exams and assignments; changing class schedules, including the ability to transfer course sections or withdrawal from a course without penalty;
- providing academic support services, such as tutoring; and providing alternative course completion options;
- changing work schedules, job assignments, and worksite location;
- limiting an individual’s or organization’s access to certain College facilities or activities pending resolution of the matter;
- voluntary leave of absence;
- administrative leave; and/or
- any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

## **VI. Adaptable Remedies**

Adaptable remedies are a form of supportive measure that are non-adjudication approaches designed to address the behavior of concern without taking disciplinary action against a responding party. Where the report assessment concludes that adaptable remedies may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies. Adaptable remedies are sought prior to or in lieu of initiating the formal complaint process.

Adaptable remedies are case-specific and are tailored to address the harms described by the reporting party and the impact on the community. Examples of potential remedies include some of the supportive measures referenced above in Section V.B. Other potential adaptable remedies include targeted or broad-based educational programming or training, communication with the



responding party by the Title IX coordinator or other College administrator, or appropriate application of restorative/transformational justice frameworks designed to help the reporting party identify their needs and the responding party repair harm and rebuild trust. Depending on the form of adaptable remedy used, it may be possible for a reporting party to remain unidentified.

## **VII. Formal Complaint Process - Investigation**

- A. Overview. After a report assessment, the formal complaint process can be initiated by the College. Please note that once a formal complaint process is initiated the terms “complainant” and “respondent” are used to refer to the “reporting party” and “responding party,” respectively.
- B. Informal Resolution. At any point following the receipt of a formal complaint and before an adjudication, the parties may request consideration of an informal resolution to the complaint. An informal resolution presents the opportunity for the complainant and respondent to reach a resolution without an investigation or hearing. Participation in an informal resolution in lieu of the formal complaint process is purely voluntary.
  1. Limitation of Informal Resolution. Informal resolutions are available only when a formal complaint has been filed and the parties agree to its use in writing. Informal resolutions may be used only with the approval of the Title IX coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal resolutions are not available to resolve a student-complainant’s allegations that an employee has engaged in Title IX-covered behavior.
  2. Procedures of Informal Resolution. Prior to initiating an informal resolution, the Title IX coordinator will provide the parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from the informal resolution to pursue the formal complaint process (or resume the formal complaint process), and any consequences of participation (*e.g.*, as it relates to any subsequent formal resolution if informal resolution is not achieved). The outcome of the informal resolution will be documented in an agreement or other form that is signed by both the parties.
  3. Possible Forms of Informal Resolution. Informal resolutions may take many forms as agreed to between the parties and the Title IX coordinator, including, but not limited to, mediation, restorative justice conferences or circles, facilitated

dialogue, voluntary non-participation in certain College programs or activities, or any other voluntarily-agreed to forms of resolution.

- C. Notice of Allegations. The Title IX coordinator will send a Notice of Allegations to both the complainant and the respondent, providing the parties with written notification of the receipt of a formal complaint. Providing the Notice of Allegations and initiating an investigation does not necessarily mean that an adjudication is inevitable or that a complainant must pursue an adjudication.

The Notice of Allegations will provide the parties with the following information:

- Copies of the Policy and relevant procedures, including information about the informal resolution option;
- Sufficient detail of the allegations presented in the formal complaint;
- Statement that an investigation is being initiated and the identity of the investigator;
- Statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the student conduct process;
- Statement that knowingly providing false statements during the formal complaint process may subject the parties to discipline per applicable College policies;
- Inform the parties that they may have an advisor of their choice;
- Inform the parties that if the investigation reveals additional allegations that may constitute violations of the Policy, the parties will receive a revised Notice of Allegations.

- D. Investigator. The College will designate a trained investigator(s) to investigate these reports. All investigators will receive annual training with an emphasis on investigating these complex and sensitive cases.

- E. Advisor of Choice.

1. Selection of Advisor of Choice. The complainant and respondent have the option to be assisted by an advisor of their choice. The advisor may be any person: friend, mental health professional, certified victim's advocate, attorney, an individual at the College, etc. The College's duty is to the complainant/respondent, not the advisor.

Provided the selected advisor agrees to serve in this capacity, the individual may be required to meet with the Title IX coordinator, the College's legal counsel, or designee(s) in advance of any participation in the formal complaint process.

If the advisor is an attorney or other retained person, the advisor must be retained at the initiative and expense of the complainant/respondent. If the advisor is an attorney, the College's legal counsel may also attend any meeting. An attorney's participation in any meeting will be governed by these restrictions and parameters.

2. **Advisor Appointed by the College.** If a party has not identified an advisor of choice by the time that the Notice of Adjudication is provided to the parties, the College will provide an advisor to the party/parties for the purpose of cross-examination during the adjudication.
  3. **Role of Advisor.** At the discretion of the complainant or respondent, their respective advisor may accompany the complainant or respondent to any meeting related to these procedures, including interviews with the investigator. The cross-examination of the parties and witnesses during the adjudication is conducted by the advisors. Other than during the cross-examination process, the advisor is expected to be a silent and non-participating observer, except to ask for a short break if the complainant/respondent requires some time for composure or to collect thoughts. The advisor may communicate with the complainant/respondent during proceedings in a non-disruptive manner. The advisor may be required to leave the meeting, if disruptive. The advisor may not delay, disrupt, or otherwise take action to interfere with the integrity of the process.
- F. **Investigation.** Where the report assessment concludes that an investigation is appropriate, the College will initiate such an investigation. The College may designate an investigator of its choosing, provided that the investigator has specific training and experience investigating allegations of prohibited conduct. Any investigator chosen to conduct or assist with the investigation must be impartial and free of any conflict of interest. The Notice of Allegations will initiate the investigation process.

The investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case. The first step of an investigation will usually be an interview of the complainant by the designated investigator(s). The investigator(s) will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the determination. As part of the investigation, the College will provide an opportunity for the parties to present statements, witnesses, and other evidence. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between

the parties, and other electronic records as appropriate. The investigator may only use medical or psychological records obtained by a party when such records are accompanied by that party's voluntary, written consent. The complainant and respondent will have an equal opportunity to be heard, to present relevant information to the investigator(s), and to identify witnesses who may have relevant information.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with sensitivity and respect. As described in the Policy, the investigation will be conducted in a manner that is respectful of individual privacy concerns. For complaints against a faculty member that involve conduct in their instructional role, or educational content within a College program, issues of academic freedom will be fully considered and explored. (See Special Provisions for Faculty.)

1. **Duration.** The investigation will usually be completed within thirty (30) business days of the notice of investigation, but this time frame may be extended for good cause depending on the complexity of the circumstances of each case. The duration of the investigation is strongly influenced by the availability and/or responsiveness of all involved parties, the complexity of the circumstances of the complaint, and the College's academic calendar.
2. **Applicability.** The investigation will confirm whether the alleged conduct implicates possible Title IX-covered behavior, College-defined sexual misconduct, or neither. If the alleged conduct is not Title IX-covered behavior, the complaint will be dismissed under these procedures and may be referred into another process that addresses the alleged conduct.
3. **Interview Summaries.** During the investigation, the complainant and respondent will be given the opportunity to review their own statement and interview summaries for accuracy.

**G. Dismissal of a Formal Complaint under Title IX.** If it is determined that a formal complaint is to be dismissed under Title IX for any of the reasons described below, the parties will each receive written notice of the dismissal, the reason for the dismissal, and a description of any other applicable processes that may address the alleged conduct.

1. If it is determined that the alleged conduct would not constitute Title IX-covered behavior, even if proven, the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.

2. If the alleged conduct did not occur against a person in the United States, then the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.
3. If the alleged conduct did not occur on the College's campus or as part of a College education program or activity, then the formal complaint will be dismissed under Title IX and will be referred to other applicable College processes for resolution of the complaint.
4. The College may dismiss a formal complaint under Title IX when the complainant provides the Title IX Coordinator with a written request to rescind the formal complaint.
5. If a respondent is no longer employed at the College after a formal complaint has been filed, the College may continue the formal complaint process to the extent possible and practicable in light of all the circumstances at that time. The complainant will be informed about their options, which may include proceeding with the formal complaint process or rescinding the formal complaint as described above.
6. If specific circumstances prevent the College from gathering evidence sufficient to reach a determination on the formal complaint, then the College may dismiss the formal complaint.

H. Reviewing the Investigative Material. At the conclusion of the investigation, the investigator will provide the investigative material gathered during the investigation to the Title IX coordinator (or designee). The investigative material will include all information gathered during the investigation that is directly related to the allegations raised in the formal complaint. The Title IX coordinator (or designee) will provide access to the investigative material to the parties and their advisors and outline the available resolution options, including informal resolution or an adjudication. The parties will be provided a minimum of ten (10) days to consider the information and options presented by the Title IX coordinator and to review the investigative material and provide their written responses.

1. Written Responses. Written responses to the investigative materials may include clarifications to the party's own interview statements or requests for additional investigation. The written responses will be provided to the investigator for their consideration prior to their submission of the Final Investigative Report. The investigator will have three (3) days to review the responses and determine if

additional investigation is necessary. If additional investigation is necessary, the Title IX coordinator will provide notice to the parties.

2. Final Investigative Report. After assessing the written responses and making any necessary clarifications, the investigator will provide the final investigative report to the Title IX coordinator.

### **VIII. Formal Complaint Process - Adjudication and Disciplinary Action**

- A. Overview. The adjudication process for prohibited conduct complaints is an administrative process and is not subject to the same standards as a court of law. Rules of evidence ordinarily found in legal proceedings will not apply.
- B. Notice of Adjudication and Review of Final Investigative Report. If an adjudication is the selected resolution option, the Title IX coordinator will issue a Notice of Adjudication to both parties and their respective advisors. This Notice will provide a statement of the policy violation(s) that are alleged to have taken place, a brief description of the facts underlying the allegations, the name of the selected adjudicator(s), and the date scheduled for the adjudication meeting.

The parties, and their advisors, will also receive access to the final investigative report and they will both have ten (10) days to review the final investigative report. The final investigative report will include the interview summaries, written statements, and any other documentary information. The final investigative report will not make a finding of responsibility or credibility, though it may include facts bearing on credibility. Any written responses by the complainant or respondent to the final investigative report must be provided to the Title IX coordinator for their consideration. The Title IX coordinator will have two (2) days to review the responses and determine if any additional investigation is required. The final investigative report and any responses provided by the parties, together, will be known as the case packet. The parties and the adjudicator(s) will receive the case packet a minimum of ten (10) days prior to the date of the adjudication. All information and/or materials the parties wish to include in the investigative report or have considered at the adjudication, must be provided to the investigator during the investigation.

- C. Adjudications for Staff (non-instructional staff).
  1. Adjudication meeting. The deputy Title IX coordinator for staff facilitates the staff adjudication process. An external adjudicator will be retained to act as the adjudicator during the adjudication meeting. After reviewing the case packet, the

external adjudicator will have an opportunity to meet with the investigator, complainant, and respondent. The adjudicator may also request to meet with identified witnesses. The meetings are not designed to reinvestigate the facts collected in the investigative report, but instead to assist the adjudicator in making a determination based on the evidence collected during the investigation. These meetings allow the adjudicator to ask questions they may have, to allow the complainant and respondent to make any statements they deem appropriate, and evaluate the credibility of the parties and witnesses. The adjudication meetings may be held in person or virtually using audio and audiovisual technology. The College will create an audio recording of the adjudication meeting and make it available to the parties for their reasonable inspection and review.

2. Cross-examination. At the adjudication meeting, each party's advisor will be permitted to ask the other party and any witnesses relevant questions and follow-up questions. Cross-examination properly conducted constitutes a procedure by which each party and witness answers questions posed from a party's unique perspective in an effort to advance the asking party's own interests. This cross-examination will be conducted directly, orally, and in real time by the party's advisor and never by the party personally. If a party or witness does not submit to cross-examination at the adjudication meeting, the adjudicator must not rely on any statement of that party or witness in reaching a determination of responsibility. However, the adjudicator cannot draw an inference about the determination of responsibility based solely from the party's or witness's absence from the adjudication meeting or refusal to answer cross-examination questions.
3. Limitations of Cross-Examination.
  - i. Before a party or witness answers a question from an advisor, the adjudicator will first determine whether the question is relevant. If the adjudicator determines a question is not relevant, the adjudicator will explain their decision to exclude the question.
  - ii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant other than in two limited situations:
    - a. Such questions or evidence are permitted to provide that someone other than the respondent committed the conduct alleged by the complainant; or

- b. Such questions or evidence are permitted if they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
    - iii. A party or witness's medical or psychological records may be the basis of cross-examination questions only if the party/witness has provided voluntary, written consent to include such records in the formal Title IX complaint process.
- 4. Determination. The adjudicator shall determine, by a preponderance of the evidence whether the Policy has been violated. The preponderance of the evidence standard means that it is "more likely than not" that the respondent violated this policy. The adjudicator will provide the Title IX coordinator and the respondent's supervisor a written summary of the findings, which will be included in the outcome letter. The summary will detail the findings of facts and determination of responsibility.
- 5. Imposition of sanction. If there is a finding of a policy violation, the respondent's supervisor will act as the disciplinary authority.

In all cases, the disciplinary authority will consult with the vice president of human resources or designee, the Title IX coordinator or designee, the director of equal opportunity, and/or other relevant administrator, as appropriate when determining the appropriate sanction.

The disciplinary authority will impose a sanction designed to eliminate the harassment or hostile environment, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and Title IX obligations and ensuring fundamental fairness. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

When deciding upon the sanction, the disciplinary authority may request that the parties and other affected individuals, as appropriate, voluntarily provide a written impact statement for consideration.

The disciplinary authority may impose any sanction deemed appropriate after a consideration of all of the relevant information. In considering the appropriate sanction, the disciplinary authority will consider the following factors: (1) the respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the complainant; (5) the impact of the conduct on the community, its members, or College property; (6) whether the respondent is



reasonably likely to engage in the conduct in the future; (7) the need to deter similar conduct by others; (8) the College's values and community standards; and (9) any other mitigating or aggravating circumstances. Absent compelling justifications, if the respondent engages in a pattern of the same or similar conduct, the recommended sanction will be termination.

The sanction may include any form of responsive action or progressive discipline, including training, referral to counseling, any of the remedies described in these procedures as adaptable remedies, and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension or termination.

6. Notice of Outcome. The disciplinary authority will give the parties a written Notice of Outcome, which will include a rationale of whether the respondent violated the College policy. The disciplinary authority will give the parties the Notice of Outcome within fifteen (15) days of the beginning of the adjudication.

If a policy violation was found, the Notice of Outcome will also provide the respondent written notice of any sanctions and any other interventions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. At the same time, the complainant will be notified in writing of any sanctions and any other interventions that directly relate to the complainant, including information about the respondent's presence on campus (or in a shared working environment) that may help a complainant make informed decisions.

The imposition of sanctions will take effect immediately and any disciplinary action against a respondent will be promptly initiated by the disciplinary authority.

7. Reconsideration. Either party may request reconsideration of the determination of responsibility or sanction(s) in writing to the Title IX coordinator. The request must be filed within five (5) business days of receiving the Notice of Outcome.

Prior to the reconsideration, the parties will have the opportunity to present any grounds to suspect that the relevant president's staff member has a bias, conflict of interest, or an inability to be fair and impartial.

The Title IX Coordinator will share the request for reconsideration with the relevant president's staff member or designee.

The complainant and/or respondent may only request reconsideration of the parts of the determination or sanctions directly relating to them. Dissatisfaction with the

determination is not grounds for reconsideration. The limited grounds for reconsideration are as follows:

- i. new evidence that would affect the determination and that was unavailable at the time of investigation;
- ii. procedural error(s) that had a material impact on the outcome; and
- iii. the sanctions imposed were grossly disproportionate to the violation committed.

The request for reconsideration shall consist of a plain, concise, and complete written statement outlining the ground(s) for the reconsideration. Upon receipt of a request for reconsideration, the Title IX coordinator will notify both parties. Each party has an opportunity to respond in writing to the request for reconsideration. Any response to the request must be submitted within five (5) days from receipt of the request for reconsideration.

In any request for reconsideration, the burden of proof lies with the party requesting the reconsideration, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The reconsideration is not a new review of the underlying matter. The president's staff member shall consider the merits of reconsideration only on the basis of the three (3) limited grounds for reconsideration. Depending on the complexity of the circumstances or the need for additional expertise, the Title IX Coordinator may also appoint a resource expert to advise the president's staff member on the issues involved. The president's staff member can require supplemental investigation of relevant new information, affirm or alter the original determination of responsibility, affirm or alter the sanction(s), or require readjudication of the allegation.

The president's staff member will communicate the result of the reconsideration to the complainant and respondent within ten (10) days from the last date of the submission of all reconsideration documents by the parties. Reconsideration decisions are final and are not subject to further review.

#### D. Adjudications for Faculty.

1. Adjudication meeting. The deputy Title IX coordinator for faculty facilitates the faculty adjudication process. A three-member faculty panel appointed from a standing body trained in sexual misconduct issues, policy, and procedure serves as the adjudicator. The Title IX Coordinator may also appoint a process expert to advise the panel on the issues involved and also make relevance determinations during the cross-examination portion of the adjudication meeting. The process expert will be tasked with supporting the faculty panel in their role as the

adjudicators, but will not be a decision-maker of the responsibility determination. After reviewing the case packet, the hearing panel and process expert will have an opportunity to meet with the investigator, complainant, respondent, and identified witnesses. The meetings are not designed to reinvestigate the facts collected in the investigative report, but instead to assist the hearing panel in making a determination based on the evidence collected during the investigation. These meetings allow the hearing panel to ask questions they may have, to allow the complainant and respondent to make any statements they deem appropriate, and evaluate the credibility of the parties and witnesses. The adjudication meetings may be held in person or virtually using audio and audiovisual technology. The College will create an audio recording of the adjudication meeting and make it available to the parties for their reasonable inspection and review.

2. Cross-examination. At the adjudication meeting, each party's advisor will be permitted to ask the other party and any witnesses relevant questions and follow-up questions. Cross-examination properly conducted constitutes a procedure by which each party and witness answers questions posed from a party's unique perspective in an effort to advance the asking party's own interests. This cross-examination will be conducted directly, orally, and in real time by the party's advisor and never by the party personally. If a party or witness does not submit to cross-examination at the adjudication meeting, the adjudicator must not rely on any statement of that party or witness in reaching a determination of responsibility. However, the hearing panel cannot draw an inference about the determination of responsibility based solely from the party's or witness's absence from the adjudication meeting or refusal to answer cross-examination questions.
3. Limitations of Cross-examination.
  - i. Before a party or witness answers a question from an advisor, the process expert will first determine whether the question is relevant. If the process expert determines a question is not relevant, the process expert will explain their decision to exclude the question.
  - ii. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant other than in two limited situations:
    - a. Such questions or evidence are permitted to provide that someone other than the respondent committed the conduct alleged by the complainant; or
    - b. Such questions or evidence are permitted if they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

iii. A party or witness's medical or psychological records may be the basis of cross-examination questions only if the party/witness has provided voluntary, written consent to include such records in the formal Title IX complaint process.

4. Determination. The hearing panel, in consultation with the process expert, will determine, by a preponderance of the evidence whether the Policy has been violated. The preponderance of the evidence standard means that it is "more likely than not" that the respondent violated this policy.

The hearing panel will provide the Title IX coordinator and the provost (or designee) a written summary of the findings, which will be included in the outcome letter. The summary will detail the findings of facts and determination of responsibility.

5. Imposition of Sanction. If there is a finding of a policy violation, the provost (or designee) will act as the disciplinary authority.

In all cases, the disciplinary authority will consult with the vice president of human resources or designee, the Title IX coordinator or designee, the director of equal opportunity, and/or other relevant administrator, as appropriate when determining the appropriate sanction.

The disciplinary authority will impose a sanction designed to eliminate the harassment or hostile environment, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and Title IX obligations and ensuring fundamental fairness. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

When deciding upon the sanction, the disciplinary authority may request that the parties and other affected individuals, as appropriate, voluntarily provide a written impact statement for consideration. The disciplinary authority may impose any sanction deemed appropriate after a consideration of all of the relevant information. In considering the appropriate sanction, the disciplinary authority will consider the following factors: (1) the respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the complainant; (5) the impact of the conduct on the community, its members, or College property; (6) whether the respondent is reasonably likely to engage in the conduct in the future; (7) the need to deter similar conduct by others; (8) the College's values and community standards; and (9) any other mitigating or aggravating circumstances. Absent compelling justifications, if the respondent engages in a

pattern of the same or similar conduct, the recommended sanction will be termination.

The sanction may include any form of responsive action or progressive discipline, including training, referral to counseling, any of the remedies described in these procedures as adaptable remedies, and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension or termination.

6. Notice of Outcome. The disciplinary authority will give the parties a written Notice of Outcome, which will include a rationale of whether the respondent violated the College policy. The disciplinary authority will give the parties the Notice of Outcome within twenty (20) days of the beginning of the adjudication.

If a policy violation was found, the Notice of Outcome will also provide the respondent written notice of any sanctions and any other interventions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. At the same time, the complainant will be notified in writing of any sanctions and any other interventions that directly relate to the complainant, including information about the respondent's presence on campus (or in a shared working environment) that may help a complainant make informed decisions.

The imposition of sanctions will take effect immediately and any disciplinary action against a respondent will be promptly initiated by the disciplinary authority.

7. Reconsideration. Either party may request reconsideration of the determination of responsibility or sanction(s) in writing to the Title IX coordinator. The request must be filed within five (5) business days of receiving the Notice of Outcome.

The Title IX Coordinator will share the request for reconsideration with the Committee on Faculty Procedures (COFP).

The complainant and/or respondent may only request reconsideration of the parts of the determination or sanctions directly relating to them. Dissatisfaction with the determination is not grounds for reconsideration. The limited grounds for reconsideration are as follows:

- i. new evidence that would affect the determination and that was unavailable at the time of investigation;
- ii. procedural error(s) that had a material impact on the outcome; and

iii. the sanctions imposed were grossly disproportionate to the violation committed.

The request for reconsideration shall consist of a plain, concise, and complete written statement outlining the ground(s) for the reconsideration. Upon receipt of a request for reconsideration, the Title IX coordinator will notify both parties. Each party has an opportunity to respond in writing to the request for reconsideration. Any response to the request must be submitted within five (5) days from receipt of the request for reconsideration.

In any request for reconsideration, the burden of proof lies with the party requesting the reconsideration, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The reconsideration is not a new review of the underlying matter. The president's staff member shall consider the merits of reconsideration only on the basis of the three (3) limited grounds for reconsideration.

Depending on the complexity of the circumstances or the need for additional expertise, the Title IX Coordinator may also provide the COFP with the process expert to advise on the issues involved. The COFP can require supplemental investigation of relevant new information, affirm or alter the original determination of responsibility, affirm or alter the sanction(s), or require readjudication of the allegation.

The COFP will communicate the result of the reconsideration to the complainant and respondent within fifteen (15) days from the last date of the submission of all reconsideration documents by the parties. Reconsideration decisions are final and are not subject to further review.

## **IX. Special Provisions for Faculty**

- A. Academic Freedom and Supportive Measures. In cases in which a faculty member is the responding party/respondent, and in which issues of academic freedom are involved, the provost will consult with the Committee on Faculty Procedures, normally before a supportive measure impacting a faculty-respondent is imposed. In the event that the safety of any member of the College community is immediately at stake, the consultation with COFP may occur after the imposition of the supportive measure.

If a member of the faculty is a responding party/respondent and believes that the imposition of an supportive measure constitutes a violation of academic freedom, the faculty member may request, in writing, a review of the supportive measure by the

elected members of the COFP, who will advise the provost of the appropriateness of the interim measure. The provost may then continue, modify or suspend the supportive measure, as appropriate, to ensure the integrity and fundamental fairness of the process, and protect the safety of all the parties and the College community.

- B. Academic Freedom and Formal Complaints. Complaints against a faculty member that involve educational content or conduct in an instructional role raise issues of academic freedom, which is protected by the College’s policy on Academic Freedom and Responsibility, found in II-A.2. in the Handbook for Instructional Staff. In such cases, the provost (or designee) will confer with the Committee on Faculty Procedures to determine how academic freedom should factor into a Title IX assessment, an investigative report, and/or a sanction.
- C. Termination of Appointments. Termination of a tenured appointment, or of a term appointment before its expiration, occurs only for adequate cause. Where the disciplinary authority recommends termination as the appropriate sanction for tenured faculty or faculty for whom a term appointment has not expired, the College will employ the “Termination of Appointments” found in III-A.13 in the Handbook for Instructional Staff.

In applying these procedures, the finding that the policy has been violated will not be revisited. The sole decision for the special committee of faculty, if convened under the “Termination of Appointments” procedure, is whether the specific policy violation constitutes “serious shortcomings” sufficient to support adequate cause for termination or dismissal.

## **X. Outside Agreements**

The College will not recognize or enforce agreements between the parties reached outside of these procedures.

## **XI. Records**

The Title IX coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by Title IX assessment, informal resolution, or adjudicated resolution. Complaints resolved by Title IX assessment or informal resolution are not part of a student’s conduct file or academic record.

The Title IX coordinator will document each report or request for assistance in resolving a case involving charges of prohibited conduct, whether by the complainant or a third party, and will

review and retain copies of all reports generated as a result of investigations. These records will be kept for seven (7) years and will be confidential to the extent permitted by law.

A finding of policy violation and any imposition of sanction becomes part of the employee's official personnel file. Such records shall be used in reviewing the employee's overall performance, any further conduct, or in developing sanctions.