



# Policy Prohibiting Sex Discrimination, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Interim Policy, Effective August 14, 2020  
Revised August 24, 2020

**Policy Prohibiting Sex-Based Discrimination, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking**

Policy Statement ..... 3

Scope of the Policy and Jurisdictional Statement ..... 3

    Spelman College Consortium Statement ..... 4

Title IX & Clery Act Compliance Coordinators ..... 5

Notice/Complaints of Policy Violations ..... 6

Time limits on reporting ..... 8

Conduct prohibited under this policy ..... 8

    Sexual Harassment ..... 8

    Sexual Assault ..... 9

        Sex Offenses, Forcible: ..... 9

        Forcible Rape: ..... 9

        Forcible Sodomy: ..... 9

        Sexual Assault with an Object: ..... 9

        Forcible Fondling: ..... 9

        Sex Offenses, Non-forcible: ..... 10

        Incest: ..... 10

        Statutory Rape: ..... 10

    Dating Violence ..... 10

    Domestic Violence ..... 10

    Stalking ..... 10

Online harassment and misconduct ..... 11

Other Misconduct Offenses ..... 11

    Sexual Exploitation ..... 11

    Threatening or causing physical harm ..... 11

    Discrimination ..... 11

    Intimidation ..... 11

    Hazing ..... 12

    Bullying & Cyberbullying ..... 12

    Violation of any other College policies ..... 12

Retaliation ..... 12

Force, Coercion, Consent and Incapacitation .....	13
Consensual Relationship Policy.....	14
Sanctions .....	15
Sanctioning Range .....	15
Sex Discrimination.....	15
Sexual Harassment.....	16
Dating Violence .....	16
Domestic Violence.....	16
Sexual Exploitation.....	16
Sexual Assault.....	16
Stalking .....	16
Retaliation .....	17
Mandatory Reporting .....	17
Mandated Reporters and Formal Notice/ Complaints .....	17
Request for No Action .....	18
Confidential Resources .....	19
On-campus confidential resources sources .....	19
Off-campus confidential resources: .....	20
Supportive measures .....	20
Emergency Removals Spelman Affiliated.....	21
Promptness .....	22
Privacy .....	22
Revisions of this Policy and Procedures .....	22
Glossary of Terms.....	23

## **POLICY STATEMENT**

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Spelman College (the “College”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sex and gender discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Spelman College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation related to such claims. Spelman College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the Complaint Resolution process during what is often a difficult time for all those involved.

The core purpose of this policy is the prohibition of all forms of sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence and stalking. Sometimes, discrimination involves exclusion from activities, such as admissions,<sup>1</sup> or employment. Other times, discrimination takes the form of harassment which can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using one of the College’s Complaint Resolution Procedures “[Process A](#)” or “[Process B](#),” as determined by the Title IX & Compliance Director, and as detailed below.<sup>2</sup> The Complaint Resolution Procedures may be applied to incidents, patterns, and /or to campus climate, all of which may be addressed and investigated in accordance with this policy

## **SCOPE OF THE POLICY AND JURISDICTIONAL STATEMENT**

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This policy applies to all students; student organizations; College employees and contractors, including staff, faculty, and administrators; and all other persons that participate in the College’s educational programs and activities, including third-party visitors on campus (the “College Community”). This policy prohibits this conduct regardless of whether the Complainant and Respondent are members of the same or opposite sex or gender.

The College may investigate any alleged violation of this policy that occurs in the context of a College program, or activity (including academic, educational, extracurricular, study abroad and internships, and other College programs), or that otherwise affect the College’s working, living or learning environments, regardless of whether that conduct occurred on or off campus.

Regardless of where the conduct occurred, the College will review complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity, or whether the College otherwise has a substantial interest in the allegations. A substantial College interest includes:

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<sup>1</sup> Spelman College is a women’s college that admits only candidates who self-identify and live as women.

<sup>2</sup> Allegations subject to resolution using “[Process A](#)” are those allegations that fall within Title IX’s jurisdiction as detailed in United States Department of Education regulations. *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85, Fed. Reg. 30026-579 (May 19, 2020). Allegations subject to resolution using [Process B](#) are those allegations where the facts do not fall within the scope of conduct prohibited by the May 19 Title IX Regulations regarding sexual harassment but are prohibited by Title IX or other federal regulations, state law or campus policy.

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not otherwise subject to sanctions imposed by the College, the Title IX & Compliance Director (or designee) will offer the Complainant supportive measures, remedies, and resources, such as, identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Although, the College may not, in certain instances, be in a position to conduct an investigation, it may provide appropriate resources or support to impacted individuals and where appropriate, the broader College Community.

### ***Spelman College Consortium Statement***

Spelman College, Clark Atlanta University, Morehouse College and Morehouse School of Medicine collectively form the Atlanta University Center Consortium (AUCC). Spelman College students and employees, when studying at, visiting, or attending a college-related event of another AUCC institution, using the Woodruff Library or its shuttle, will be subject to Spelman College policies as well as the policies of the other campus institution or library.

As appropriate, Spelman College Title IX & Compliance Director will coordinate with another institution in support of any persons affected by reported policy violations.

The names and contact information for the Title IX Coordinators throughout the AUCC is available on the Spelman College Title IX and Compliance Website and listed below:

#### **Clark Atlanta University**

Ramona Roman  
[rroman@cau.edu](mailto:rroman@cau.edu)

#### **Morehouse College**

Keith Cobbs  
[keith.cobbs@morehouse.edu](mailto:keith.cobbs@morehouse.edu)

#### **Morehouse School of Medicine**

Marla Thompson  
[mthompson@msm.edu](mailto:mthompson@msm.edu)

When the Complainant is a member of the Spelman community, a Resolution process may be available regardless of the status of the Respondent, who may or may not be a member of the Spelman community. The College may, in its discretion, dismiss a formal complaint if the Respondent is not subject to the disciplinary control, or otherwise sanctionable, by the College. In such instances, the College will provide supportive measures to the Complainant.

Similarly, the Title IX & Compliance Director may be able to assist a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

This College community includes, but is not limited to, students,<sup>3</sup> student organizations, faculty, administrators, staff, contractors, and third parties such as guests, visitors, volunteers, invitees. The Complaint Resolution Procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **TITLE IX & CLERY ACT COMPLIANCE COORDINATORS**

The College has designated the Title IX and Compliance Director, as the College's Title IX Coordinator with assistance of the Deputy Title IX & Compliance Directors, to coordinate compliance with Title IX and to respond to reports of violations. The College's Title IX and Compliance Director oversees compliance with all aspects of this policy. The Director reports to the President of the College and is directly supervised by the Secretary of the College. The College has directed the Office of Public Safety to coordinate the College's compliance with obligations related to the Clery Act.

If you have any questions about this policy, you may contact the College's Title IX and Compliance Director, Ms. Nicole Johnson: (404) 270-5060 or [njohns74@spelman.edu](mailto:njohns74@spelman.edu). For more information about Title IX and VAWA, please go to the [College Title IX Website](#).

The Title IX & Compliance Director acts with independence and authority free from bias and conflicts of interest. The Title IX & Compliance Director oversees all resolutions under this policy and related complaint resolution procedures. The members of the Title IX Team are vetted and trained to ensure that in overseeing complaints, the College's Complaint Resolution Procedures, or the provision of supportive measures they do not act with bias for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

### **Title IX & Compliance Director**

Ms. Nicole Johnson

Title IX and Compliance Director

Location/Address: Office of the Board of Trustees, Milligan Building, Rm. 2305

(404) 270-5060

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<sup>3</sup> For the purpose of this policy, the College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College. This definition also includes students who have cross-registered from other institutions.

Email: [njohns74@spelman.edu](mailto:njohns74@spelman.edu)

**Deputy Title IX & Compliance Director for Complaints involving students**

Bonnie Taylor

Assistant Vice President /Dean of Students

Location/Address: Office of the Dean of Students, Manley Student Center, Rm. 210  
(404) 270-5242

Email: [bonnie.taylor@spelman.edu](mailto:bonnie.taylor@spelman.edu)

**Deputy Title IX & Compliance Director for Complaints involving Faculty**

Ms. Sharon L. Davies, J.D.

Provost and VP for Academic Affairs/Deputy Title IX & Compliance Director

Location/Address: Office of the Provost, Rockefeller Hall, Rm. 106  
(404) 270-5031

Email: [sldavies@spelman.edu](mailto:sldavies@spelman.edu)

**Deputy Title IX & Compliance Director for Complaints involving Staff & Contractors**

Ms. Bernadette Cohen

Director of Human Resources/Deputy Title IX & Compliance Director

Location/Address: Office of Human Resources, Rockefeller Hall, Rm. 301  
(404) 270-5091

Email: [bcohen@spelman.edu](mailto:bcohen@spelman.edu)

To raise any concern involving bias or conflict of interest by the Title IX & Compliance Director contact Dr. Terri Reed, Secretary of the College, at (404) 270-5005 or by email at [treed15@spelman.edu](mailto:treed15@spelman.edu). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX & Compliance Director.

Reports of misconduct or discrimination committed by the Title IX & Compliance Director Coordinator should be reported to Dr. Terri Reed, Secretary of the College, at (404) 270-5005 or by email at [treed15@spelman.edu](mailto:treed15@spelman.edu). Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX & Compliance Director.

Inquiries or complaints related to this policy may also be made, externally with the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting their [website](#), via email [ocr@ed.gov](mailto:ocr@ed.gov), or calling 1-800-421-3481. You may also contact the Department of Education's Clery Compliance Division for inquiries or complaints regarding the College's compliance with the Clery Act at: [clery@ed.gov](mailto:clery@ed.gov) or by calling 1-800-4-FED-AID (1-800-433-3243).

**Notice/Complaints of Policy Violations**

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Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

File a complaint with, or give verbal notice to, the Title IX & Compliance Director or Deputy Title IX & Compliance Directors.

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX & Compliance Director or any other official listed.

**Deputy Title IX & Compliance Director for Complaints involving students**

Bonnie Taylor

Assistant Vice President /Dean of Students

Location/Address: Office of the Dean of Students, Manley Student Center, Rm. 210

(404) 270-5242

Email: [bonnie.taylor@spelman.edu](mailto:bonnie.taylor@spelman.edu)

**Deputy Title IX & Compliance Director for Complaints involving Faculty**

Ms. Sharon L. Davies, J.D.

Provost and VP for Academic Affairs/Deputy Title IX & Compliance Director

Location/Address: Office of the Provost, Rockefeller Hall, Rm. 106

(404) 270-5031

Email: [sldavies@spelman.edu](mailto:sldavies@spelman.edu)

**Deputy Title IX & Compliance Director for Complaints involving Staff & Contractors**

Ms. Bernadette Cohen

Director of Human Resources/Deputy Title IX & Compliance Director

Location/Address: Office of Human Resources, Rockefeller Hall, Rm. 301

(404) 270-5091

Email: [bcohen@spelman.edu](mailto:bcohen@spelman.edu)

Report [online](#), using the reporting form posted at [spelman.edu/title-ix](http://spelman.edu/title-ix). Anonymous reports are accepted but can give rise to a need to investigate. The College offers and tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report. A reporting individual or Complainant is not obligated to proceed with a Formal Complaint, Complaint Resolution Procedure, or other formal response, and the College will respect a Complainant's request to dismiss a complaint unless there is a compelling threat to health and/or safety. The Complainant is largely in control and should not fear a loss of privacy by making a report that may allow the College to discuss and/or provide supportive measures.

A Formal Complaint means a document filed and signed by the Complainant or signed by the Title IX & Compliance Director alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). A complaint may be filed with the Title IX & Compliance Director in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as



described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal).

The College has also classified most employees as Mandated Reporters, who are, required to disclose any knowledge they have that a member of the community is experiencing sexual harassment, discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties.

## **TIME LIMITS ON REPORTING**

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There is no time limitation on providing notice/complaints to the Title IX & Compliance Director. However, if the Respondent is no longer subject to the College’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, acts that have been impacted by the rescission or revision of policy) is at the discretion of the Title IX & Compliance Director, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures.

## **CONDUCT PROHIBITED UNDER THIS POLICY**

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The Department of Education’s Office for Civil Rights (OCR), and the State of Georgia regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

### ***Sexual Harassment***

Conduct on the basis of sex that satisfies one or both of the following:

- 1) Quid Pro Quo:
  - a. an employee of the College,
  - b. conditions the provision of an aid, benefit, or service of the College,
  - c. on an individual’s participation in unwelcome sexual conduct; and/or
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and

- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the College's education program or activity.<sup>4</sup>

### ***Sexual Assault***

#### Sex Offenses, Forcible:

- a) Any sexual act directed against another individual,
- b) without the consent of that individual,
- c) including instances in which the individual is incapable of giving consent.<sup>5</sup>

#### Forcible Rape:

- a) Penetration,
- b) no matter how slight,
- c) of the vagina or anus of an individual with any body part or object, or
- d) oral penetration by a sex organ of another individual,
- e) without the consent of the individual or against the individual's will, or
- f) not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

#### Forcible Sodomy:

- a) Oral or anal sexual intercourse with another individual,
- b) forcibly,
- c) without the consent of the individual or against the individual's will, or
- d) not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age<sup>6</sup> or because of temporary or permanent mental or physical incapacity.

#### Sexual Assault with an Object:

- a) The use of an object or instrument to penetrate,
- b) however slightly,
- c) the genital or anal opening of the body of another individual,
- d) forcibly,
- e) without the consent of the individual or against the individual's will, or
- f) not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

#### Forcible Fondling:

- a) The touching of the private body parts of another individual (buttocks, groin, breasts),
- b) for the purpose of sexual gratification,
- c) forcibly,
- d) without the consent of the individual or against the individual's will,

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<sup>4</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>6</sup> Per state law. The age of consent in Georgia is 16.

e) or not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible:

Incest:

- a) Non-forcible sexual intercourse,
- b) between persons who are related to each other,
- c) within the degrees wherein marriage is prohibited by Georgia law.

Statutory Rape:

Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16 years old.

### ***Dating Violence***

- a) violence,
- b) committed by a person,
- c) who is in or has been in a social relationship of a romantic or intimate nature with an individual.

The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- ii. Dating violence does not include acts covered under the definition of domestic violence.

### ***Domestic Violence***

- a. violence,
- b. committed by a current or former spouse or intimate partner of an individual,
- c. by a person with whom the individual shares a child in common, or
- d. by a person who is cohabitating with, or has cohabitated with, the individual as a spouse or intimate partner, or
- e. by a person similarly situated to a spouse of the individual under the domestic or family violence laws of Georgia, or
- f. by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Georgia.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship

### ***Stalking***

- a) engaging in a course of conduct,
- b) directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or

- ii. the safety of others; or
- iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

### **ONLINE HARASSMENT AND MISCONDUCT**

The policies of the College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College’s educational program and activities or use the College’s networks, technology, or equipment.

While the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

### **OTHER MISCONDUCT OFFENSES**

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In addition to the violations described above, which fall within the coverage of Title IX sexual harassment, the College also prohibits the following offenses as forms of sex based discrimination when the act is based on the Complainant’s actual or perceived sex, sexual orientation, gender identity/expression, pregnancy status, or status as a parent.

#### ***Sexual Exploitation***

Taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.

***Threatening or causing physical harm***, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

***Discrimination***, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;

***Intimidation***, defined as implied threats or acts that cause an unreasonable fear of harm in another;

**Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

**Bullying & Cyberbullying**, defined as:

- Repeated and/or severe behavior that is
- Intended or likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally.

**Violation of any other College policies** may constitute a discrimination on the basis of sex, when a violation is motivated by actual or perceived sex, sexual orientation, gender identity/expression, pregnancy status, or status as a parent and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

## **RETALIATION**

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Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the Resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX & Compliance Director and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of College's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The college may charge an individual with separate a code of conduct violation, when the college determines an individual has made a materially false statement in bad faith in the course of a Resolution proceeding under this policy and procedure. A determination regarding responsibility following the conclusion of a Resolution proceeding, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **FORCE, COERCION, CONSENT AND INCAPACITATION**

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As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

### **Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in specific sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship, or previous statement or indication that an individual wanted to engage in sexual activity, is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. A Respondent’s temporary mental state, including mental state caused by alcohol or drugs, is not a defense to a sexual assault policy violation.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

## **CONSENSUAL RELATIONSHIP POLICY**

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Consensual relationships between employees and students are inconsistent with the mission of the College. This type of behavior risks damaging the student’s educational experience, gives the appearance of favoritism and impropriety, harms morale and risks the reputation of the College.

Employees are strongly advised to exercise their best professional judgment concerning students. The College thus prohibits consensual relationships between employees and students.

If a teaching, mentoring, or supervisory relationship exists between individuals with a current or prior consensual relationship, the relationship must be disclosed to the Provost/Vice President for Academic Affairs or the Vice President for Student Affairs, and alternative teaching arrangements will be implemented and a determination will be made regarding a policy violation.

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Additionally, The College prohibits employees from supervising, evaluating, or determining the terms and/or conditions of employment of anyone with whom they have or had a sexual relationship.

When a current or past sexual relationship exists between any employees in a supervisory relationship, immediate steps must be taken to terminate the supervisory arrangement, and alternative means of supervision will be implemented. The supervisor must disclose this relationship to the Director of Human Resources. Either party may request alternative means of supervision.

The complete Consensual Relationship Policy is available online at <https://www.spelman.edu/title-ix/policies-and-procedures/consensual-relationship-policy>.

## **SANCTIONS**

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The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy. In determining the appropriate sanction the College engages in a careful review of factors and circumstances.

When a violation of the Policy is found, sanctions are determined based on several factors, including the severity of the conduct and any prior policy violations. In addition, the College may take steps to address the effects of the conduct on victims and others, including, but not limited to, counseling and support resources, academic and housing assistance, change in work situations, leaves of absence, and training or other preventative measures. Sanctions and remedial actions aim to eliminate any hostile environment, prevent sex-base discrimination, sexual harassment, sexual assault, dating violence, domestic violence, and stalking recurring, and remedy any discriminatory effects on a Complainant or others.

### ***Sanctioning Range***

The following are the typical sanctions that may be imposed upon students/ student organizations and employees, singly or in combination. Sanctions may only be imposed after the completion of a College's Complaint Resolution Procedures, and after a determination, in writing, that a Respondent is responsible for the actions alleged by the Complainant. The sanction imposed will be based on a fact-specific inquiry, and considerations may include the nature and severity of the offense, history or pattern of prior offenses by the Respondent, and impact of the offense on the Complainant and the greater Spelman community. Potential sanctions for a finding of responsibility for students and student organizations include:

#### **Sex Discrimination**

Students/ Organizations: Letter of Warning, Disciplinary Probation, Educational Project, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Verbal Warning, Written Warning, Performance Improvement Plan, Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension with Pay, Suspension without Pay, Demotion, Revocation of Tenure, Termination



### Sexual Harassment

Students/ Organizations: Letter of Warning, Disciplinary Probation, Educational Project, Suspension of Housing, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Verbal Warning, Written Warning, Performance Improvement Plan, Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension with Pay, Suspension without Pay, Demotion, Revocation of Tenure, Termination

### Dating Violence

Students/ Organizations: Disciplinary Probation, Educational Project, Suspension of Housing, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension without Pay, Demotion, Revocation of Tenure, Termination

### Domestic Violence

Students/ Organizations: Disciplinary Probation, Educational Project, Suspension of Housing, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension without Pay, Demotion, Revocation of Tenure, Termination

### Sexual Exploitation

Students/ Organizations: Disciplinary Probation, Educational Project, Suspension of Housing, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension without Pay, Demotion, Revocation of Tenure, Termination

### Sexual Assault

Students/ Organizations: Disciplinary Probation, Educational Project, Suspension of Housing, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension without Pay, Demotion, Revocation of Tenure, Termination

### Stalking

Students/ Organizations: Letter of Warning, Disciplinary Probation, Educational Project, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Verbal Warning, Written Warning, Performance Improvement Plan, Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension with Pay, Suspension without Pay, Demotion, Revocation of Tenure, Termination

## Retaliation

Students/ Organizations: Letter of Warning, Disciplinary Probation, Educational Project, Restricted Access to Campus and College Activities, Restitution, Transcript Notation, Suspension, Expulsion

Employees: Verbal Warning, Written Warning, Performance Improvement Plan, Required Counseling, Required Training or Education, Loss of Annual Pay Increase, Suspension with Pay, Suspension without Pay, Demotion, Revocation of Tenure, Termination

## **MANDATORY REPORTING**

Most Spelman College employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX & Compliance Director (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Spelman College for a Complainant or third-party (including parents/guardians when appropriate):

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with a confidential resource listed below.

### ***Mandated Reporters and Formal Notice/ Complaints***

Most employees of Spelman College (including certain student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX & Compliance Director all known details of a disclosure made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX & Compliance Director.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that

must be reported to the Title IX & Compliance Director by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.

Supportive measures may be offered as the result of such disclosures without formal College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of this policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### ***Request for No Action***

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX & Compliance Director, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX & Compliance Director has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX & Compliance Director may sign a formal complaint to initiate a Resolution process upon completion of an appropriate violence risk assessment.

The Title IX & Compliance Director's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX & Compliance Director must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a formal Complaint Resolution Process fairly and effectively.

When the Title IX & Compliance Director executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or Resolution process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests privacy/no formal investigation and the circumstances allow the College to honor that request, the College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal resolution.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the allegations investigated and properly resolved through these procedures.

## CONFIDENTIAL RESOURCES

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A confidential resource is an individual who is legally and/or ethically bound to keep information confidential that is shared with them in the course of providing counseling or support. Confidential communications cannot be disclosed to anyone without the reporter’s consent, except under extreme circumstances including the physical or sexual abuse of a minor or in cases of immediate threat or danger to a person(s) or the larger College community. Confidential resources also may be required to report limited information, excluding any personally identifiable information, about certain reports of alleged misconduct in compliance with federal reporting requirements.

*On-campus confidential resources* include the following:

Spelman Counseling Services MacVicar Hall (404) 270-5293	Spelman Health Services MacVicar Hall (404) 270-5249
Dean of the Chapel Bessie Strong Center (404) 270-5728	Magellan -Employee Assistance Program (800) 523-5668 or (800) 882-7610 (TTY) <a href="http://MagellanAscend.com">MagellanAscend.com</a>

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

For students, the counseling services staff can be accessed on an emergency basis after hours and on weekends by contacting the Spelman College Public Safety by dialing (404)525-6401 and requesting to speak to a counseling services staff member.

For employees, the College provides a 24/7 employee assistance program (EAP) through Magellan. For more information, please visit [MagellanAscend.com](http://MagellanAscend.com) or dial 1-800-523-5668.

***Off-campus confidential resources:***

Off-campus confidential resources are available on the [Spelman College Title IX & Compliance Website](#)

**SUPPORTIVE MEASURES**

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The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX & Compliance Director promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already. The Title IX & Compliance Director works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are offered.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

These Remedies/Actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Criminal Trespass Warning (CTW) or Be-On-the-Lookout (BOLO) orders<sup>8</sup>

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<sup>8</sup> CTW or BOLO are actions implemented and enforced through sworn law enforcement officers.

- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX & Compliance Director

When a no contact order has been issued as a supportive measure or sanction in response to a complaint of a pattern or repeated actions on the part of the Respondent (such as, for example, a complaint of stalking or repeated sexual harassment), violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Spelman College may be limited in its ability to institute supportive measures when the complainant attends/ works at an AUCC institution. The Spelman College Title IX & Compliance Director, to the extent reasonable, will coordinate implementation of support measures at the Complainant's home institution.

## **EMERGENCY REMOVALS**

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The College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX & Compliance Director in consultation with the Dean of Students, Director of Human Resources and/or the Office of the Provost, and the Spelman College Public Safety Department, using its standard objective violence risk assessment procedures.

When a Respondent is not a full-time student or employee of the College, but has an intermittent, ongoing relationship with the College that requires continual interaction with the College (such as a cross-registered student, contractor, or professor/faculty of another institution that has a working, contractual relationship with the College), the Dean of Students, Chief Financial Office/Vice President of Business and Financial Affairs, Director of Human Resources, and/or the Office of the Provost (as appropriate), will determine the proper course of action regarding the cross-registration status or contractual relationship.

In all cases in which an emergency removal is imposed, the student, employee, or contractor will be given notice of the action and the option to request to meet with the Title IX & Compliance Director prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. A Respondent requesting such a meeting may also bring an Advisor of their choosing.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 5 business days of a Respondent's receipt of notice, objections to the emergency removal will be deemed waived.

## **PROMPTNESS**

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All allegations are acted upon promptly by The College once it has received notice or a formal complaint. Complaints can take 90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in College's procedures will be delayed, The College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **PRIVACY**

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Every effort is made by the College to preserve the privacy of reports. The College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or Resolution proceeding arising under these policies and procedures.

The College reserves the right to designate which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX & Compliance office, Division of Student Affairs, Dean of Students office, and the Spelman College Public Safety Department Police Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

## **REVISIONS OF THIS POLICY AND PROCEDURES**

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

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

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

## GLOSSARY OF TERMS

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- **Advisor** means a person chosen by a party or appointed by the College to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Complainant** means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- **Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when the College is in normal operation.
- **Education program or activity** means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- **Final Determination:** A conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding:** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Resolution Process** means “[Process A](#),” a method of formal resolution designated by the College to address conduct that falls within the policies and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- **Resolution Process Pool** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).



- **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within the College’s Formal Resolution process.
- **Investigator** means the person or persons charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Mandated Reporter** means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator and/or their supervisor.<sup>9</sup>
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority** (OWA) means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the College.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Resolution Process detailed below and defined above.
- **Process B** means any process designated by the College to apply only when Process A does not, as determined by the Title IX Coordinator.
- **Recipient** means a postsecondary education program that is a recipient of federal funding.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- **Resolution** means the result of an informal or Formal Resolution Process.
- **Sanction** means a consequence imposed by the College on a Respondent who is found to have violated this policy.

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<sup>9</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- ***Sexual Harassment*** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. [See Section 17.b.](#), for greater detail.
- ***Title IX Coordinator*** is at least one official designated by the College to ensure compliance with Title IX and the College’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- ***Title IX Team*** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.

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