



# SEXUAL MISCONDUCT, RELATIONSHIP VIOLENCE AND STALKING COMPLAINT RESOLUTION PROCESS “A”

The procedures explained in this Process A pertain to alleged violations of the [Sexual Misconduct, Relationship Violence and Stalking Policy](#) that fall under the requirements as set forth in Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85, Fed. Reg. 30026-579 (May 19, 2020).

For misconduct that fall outside the scope of the requirements as set forth in Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85, Fed. Reg. 30026-579 (May 19, 2020), please see procedures detailed in Sexual Misconduct, Relationship Violence and Stalking [Complaint Resolution Process “B”](#).

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## OVERVIEW

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Spelman College (“the College”) is committed to providing a safe and nondiscriminatory environment for all members of its community. These procedures outline the process the College will follow when it receives a report alleging a violation of the [College’s Policy Prohibiting Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking \(“Sexual Misconduct, Relationship Violence and Stalking Policy”\)](#) that fall under the requirements as set forth in Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85, Fed. Reg. 30026-579 (May 19, 2020). The Title IX and Compliance Director (“Title IX Director”) oversees compliance with Title IX, the College’s [Sexual Misconduct, Relationship Violence and Stalking Policy](#), and the related Complaint Resolution Process (“Complaint Resolution Process”).

All reports will be handled in a prompt, fair, and impartial manner in accordance with Title IX of the Education Amendments Act of 1972 and related guidance, the Violence Against Women Reauthorization Act of 2013, other relevant laws and regulations, and applicable College policies, including the Sexual Misconduct, Relationship Violence and Stalking Policy and its Complaint Resolution Procedures.

The process described below is the College’s internal administrative process to determine whether College policy has been violated; it is not a criminal or legal process. As such, Spelman’s process does not use the same rules of procedure and evidence as those used by courts or law enforcement to investigate or adjudicate criminal or civil legal violations. A victim of sexual violence or other crime has the right to file and pursue only a criminal complaint with law enforcement, decline to notify such authorities, or simultaneously file a complaint with law enforcement and the College. The College can assist in notifying law enforcement authorities. Parties may also have options to file civil actions in court and a complaint with the Department of Education Office for Civil Rights, the Equal Employment Opportunity Commission or with the Clery Compliance Division, where applicable.

The College will always strive for consistency in following the procedures set forth in this Complaint Resolution Process, but recognizes that the unique circumstances of any particular case may require flexibility. As such, the College reserves the right to adapt the Complaint Resolution Process to meet the particular circumstances of each case, while preserving transparency and fairness for all Parties and maintaining the integrity of the Complaint Resolution Process. The procedures described below may also be used to address collateral misconduct arising from the investigation or occurring in conjunction with harassing or discriminatory conduct (e.g. vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the Student Code of Conduct, faculty, or staff handbooks.

The College will send written communications to students, faculty, or staff involved in the Complaint Resolution Process through their College-assigned e-mail account. Students, faculty, and staff are responsible for checking their College-assigned e-mail on a daily basis. All communications sent via e-mail are presumptively deemed to be received.

## **NOTICE/COMPLAINT**

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Upon receipt of a signed written formal complaint or notice to the Title IX Director (or designee) of an alleged violation of the [Policy](#), the College initiates a prompt initial assessment to determine the next steps the College needs to take. The College will initiate at least one of three responses:

1. Offering supportive measures because the Complainant does not want to proceed formally or because the College lacks jurisdiction to investigate or adjudicate the complaint; and/or
2. An Informal Resolution to a formal complaint (informal resolution is not available when a student submits a Formal Complaint against an employee; and/or
3. A Formal Resolution Process including an investigation and a hearing.

The investigation and Formal Resolution Process will determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies and/or sanctions, as appropriate, designed to ensure that the College is not deliberately indifferent to incidents of harassment or discrimination, their potential recurrence, or their effects.

### ***Initial Assessment***

Following receipt of notice or a signed formal complaint of an alleged violation of the [Sexual Misconduct, Relationship Violence and Stalking Policy](#), the Title IX Director (or designee) engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice<sup>1</sup> is given, the Title IX Director seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Director determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety to the Spelman community.
- If a formal complaint is received, the Title IX Director assesses its sufficiency and works with the Complainant to make sure it is completed correctly. The Title IX Director will also determine if the misconduct alleged falls within the scope of Title IX and advise the Complainant.
- The Title IX Director reaches out to the Complainant to offer supportive measures.
- The Title IX Director works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Director works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Director works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Resolution Process is initiated, though the Complainant can elect to initiate one later, if desired.

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<sup>1</sup> Notice refers to the act of an employee, student, or third-party informing the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. Notice, which is separate from a formal complaint, is usually the first step in the process and does not require any subsequent formal complaint or processes.

- If an Informal Resolution option is preferred, the Title IX Director assesses whether the complaint is suitable and may seek to determine if the Complainant and the Respondent are also willing to engage in informal resolution.
- If a Formal Resolution Process is preferred, the Title IX Director determines whether the misconduct alleged falls within the scope of Title IX and whether the misconduct and Respondent falls within the College's jurisdiction.

If the Title IX Director determines that the Title IX resolution ("Process A") does not apply, the Title IX Director will "dismiss" that aspect of the complaint, if any, assess which resolution process is applicable, and will refer the matter accordingly. **Please note that dismissing a complaint under the Title IX Sexual Harassment Policy ("Process A") is a procedural step and does not limit the College's authority to address a complaint with an appropriate process and remedies. As appropriate, the College will address formal complaints alleging a violation of the Sexual Misconduct Policy to Complaint Resolution Process B (INSERT HYPERLINK).**

***Complaint Dismissal (Mandatory or Discretionary)***

Under U.S. Department of Education regulations applicable to Title IX Sexual Harassment, the College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the College's [Sexual Misconduct, Relationship Violence and Stalking Policy](#) even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations),
3. and/or the College does not have control of the Respondent; and/or
4. The conduct did not occur in the United States; and/or
5. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the College.

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Director in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the College such that the College no longer has control over the Respondent; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties, where appropriate. This dismissal decision is appealable by any Party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### ***Emergency Removal***

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 Director in conjunction with the appropriate campus administrators and/or Spelman College Public Safety department and is typically part of the initial assessment.

In all cases in which an emergency removal is imposed, the party being removed will be given notice of the action and the option to request to meet with the Title IX 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 may be accompanied by an Advisor of their choice when meeting with the Title IX Director for show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

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 five (5) business days of the notice, objections to the emergency removal will be deemed waived. There is no appeal process for emergency removal decisions.

The Title IX Director has sole discretion under the [Sexual Misconduct, Relationship Violence and Stalking Policy](#) to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under the [Sexual Misconduct, Relationship Violence and Stalking Policy](#) will be grounds for disciplinary action, which may result in expulsion or termination.

### **TITLE IX DIRECTOR RETALIATION**

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The College prohibits retaliation for reporting or participating in the Complaint Resolution Process. Any individual who is subject to or aware of possible retaliation or has other concerns regarding a complaint should report these concerns to the Title IX Director, who shall take appropriate action to address such conduct in a prompt and equitable manner. Reports of retaliation may be submitted electronically using an incident report form, which can be found here: [www.spelman.edu/title-ix](http://www.spelman.edu/title-ix)

### **COUNTERCLAIMS**

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The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted. Counterclaims may be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Director. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of the [Sexual Misconduct, Relationship Violence and Stalking Policy](#).

## **RIGHT TO AN ADVISOR**

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The Complainant and Respondent (“Parties”) may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A Party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s). The College may permit Parties to have more than one Advisor upon special request to the Title IX Director. The decision to grant this request is at the sole discretion of the Title IX Director and will be granted equitably to all Parties. The College maintains a list of staff and faculty who are eligible to serve in this role.

A Party may make a request of the Title IX Director to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. The purpose of this pre-meeting is to allow Parties and their Advisors to clarify and understand their role and College’s policies and procedures. The merits of the investigation or complaint will not be discussed during this meeting.

### ***Who Can Serve as an Advisor***

The Advisor may be a friend, mentor, family member, attorney, or any other individual a Party chooses to advise, support, and/or consult with them throughout the resolution process. The Parties may choose Advisors from inside or outside of the College community. Prior to a hearing, the Title IX Director will also offer to assign a trained Advisor for any Party if the Party so chooses. If the Parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College’s resolution process. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

### ***Advisor’s Role***

The Parties may be accompanied by their Advisor in all meetings and interviews at which the Party is entitled to be present, including intake and investigation interviews. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Title IX Director, Investigator(s) or other Decision-maker(s) except during a hearing proceeding during cross-examination. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by quietly conferring or passing notes during any resolution process meeting, interview, or hearing.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other Party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

### ***Expectations of an Advisor***

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College generally expects an Advisor to adjust their schedule to allow them to attend College scheduled meetings when planned. The College may also make reasonable provisions to allow an Advisor

who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Any Advisor who oversteps their role as defined by the [Sexual Misconduct, Relationship Violence and Stalking Policy and these Complaint Resolution Procedures](#) will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented.

### ***Advisors in Hearing/ College-Appointed Advisor***

Under U.S. Department of Education regulations applicable to Title IX Sexual Harassment, cross-examination during the hearing must be allowed, and must be conducted by the Parties' Advisors. The Parties are not permitted to directly cross-examine each other or any witnesses. If a Party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A Party may reject this appointment and choose their own Advisor, but the Party may not proceed in a Title IX Sexual Harassment ("Process A") hearing without an Advisor. If the Party's Advisor does not conduct cross-examination, the College will appoint an Advisor who will do so in a respectful, non-abusive manner, regardless of the participation or non-participation of the advised Party in the hearing itself. Extensive questioning of the Parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

## **RESOLUTION PROCESSES**

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The College resolves complaints either through Informal or Formal Resolutions, both processes are described in more detail below.

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with College policy. While there is an expectation of privacy around what Investigators share with Parties during interviews, the Parties have discretion to share their own knowledge and evidence with others if they so choose. The College encourages Parties to discuss sharing information with their Advisors before doing so.

### ***Resolution Timeline***

Upon receipt of a formal complaint, and determination by the Title IX Director the complaint is appropriate for Process A, the College will make a good faith effort to complete the resolution process within a -ninety (90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Director, who will provide notice and rationale for any extensions or delays to the Parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### ***Resolution Process Pool***

The Resolution Processes rely on a pool of campus administrators and faculty ("the Pool") to carry out the process.

### ***Pool Member Appointment***

The Title IX Director, in consultation with the College's Senior Team, appoints the Pool, which acts with independence and impartiality. While members of the Pool are trained annually in a variety of skill sets and can rotate amongst the different roles in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. The process of role assignment may be the result of administrative function within the College, particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

### **INFORMAL RESOLUTION**

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Informal Resolution can include three different approaches:

- When the Parties agree to resolve the matter through an alternate resolution mechanism;
- When the Respondent accepts responsibility for violating [policy](#), and desires to accept a sanction and end the resolution process; or
- When the Title IX Director can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. Either the Complainant or Respondent can contact the Title IX Director to request Informal Resolution. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Resolution Process, and any Party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution Process.

Prior to implementing Informal Resolution, the College will provide the Parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Director. The Title IX Director maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

The Informal Resolution process can include negotiation, mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. All Parties must consent to the use of Alternate Resolution. The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Director. The Title IX Director maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

### ***Respondent Accepts Responsibility for Alleged Violations***

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Director will determine whether Informal Resolution can be used.

If Informal Resolution is applicable, the Title IX Director will determine whether all Parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Director implements the accepted finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary. This result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of resolution. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

### **FORMAL RESOLUTION PROCESS:**

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The Title IX Director will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Resolution Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include, among other items, a meaningful summary of all allegations and Parties involved, relevant policies implicated, a statement of the potential sanctions/responsive actions, a statement that the NOIA is not a presumption that a [Policy](#) violation has occurred and that an investigation and determination into the allegation will determine responsibility, a statement that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence, and the name(s) of the Investigator(s). Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the Parties as indicated in official College records, or emailed to the Parties’ College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### ***Appointment of Investigators***

Once the decision to commence a formal investigation is made, the Title IX Director appoints an Investigator to conduct the investigation, usually within five (5) business days of determining that an investigation should proceed. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to review fully and respond to all evidence on the record.

### ***Investigation Timeline***

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the

allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

### ***Steps in the Investigation Process***

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses and obtaining available, and relevant evidence. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions they wish the Investigator(s) to ask of the other Party and witnesses, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included. The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no [policy](#) analysis, and render no recommendations as part of their report.

Prior to the conclusion of the investigation, Parties will receive a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each Party may meaningfully respond to the evidence. The Investigator(s) will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

### ***Role and Participation of Witnesses in the Investigation***

Witnesses (as distinguished from the Parties) who are employees of the College are expected to cooperate with and participate in the College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of [policy](#) and may warrant discipline.

While in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, or global pandemic) may require individuals to be interviewed remotely. Zoom, Microsoft Teams, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved Parties must be made aware of audio and/or video recording.

### ***Evidentiary Considerations***

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the Parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the

Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered as evidence of consent.

## **FORMAL RESOLUTION HEARING PROCESS**

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### ***Referral for a Hearing***

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the Parties, the Title IX Director will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the Parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Director will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student.

### ***Notice of Hearing***

No less than ten (10) business days prior to the hearing, the Title IX Director or the Chair will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the [Sexual Misconduct, Relationship Violence and Stalking Policy](#)) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 90 business-day goal for resolution. Employee promotions and raises will be placed on hold until the matter is fully resolved.

### ***Hearing and Decision-maker Composition***

The College will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Director. With a panel, one of the three members will be appointed as Chair by the Title IX Director. If a Party requests a panel of Decision-makers, the Title IX Director can, in his/her sole discretion, choose to empanel a three-member panel.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Director may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Individuals who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Individuals who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Director may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

### ***Evidentiary Considerations***

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to provide evidence of consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The Parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s). These statements will be considered when a determination of responsibility is reached to inform the sanctioning stage.

After post-hearing deliberation, the Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the [Policy](#) as alleged.

### ***Alternative Hearing Participation Options***

If a Party or Parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Director or the Chair at least five (5) business days prior to the hearing. The Title IX Director or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Director or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### ***Hearing Procedures***

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the [Sexual Misconduct, Relationship Violence and Stalking Policy](#).

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the Parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the Parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the Parties and will then be excused.

### ***The Order of the Hearing***

#### ***Introductions and Explanation of Procedures***

The Chair explains the procedures and introduces the participants. The introduction phase may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Director will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the Parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator or the Title IX Director. The hearing facilitator may attend to: logistics of rooms for various Parties/witnesses as they wait; flow of Parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

#### ***Investigator Presents the Final Investigation Report***

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) will be available during the entire hearing process, but not during deliberations. Because the Investigator's participation in the hearing is as a fact witness, questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation. Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on recommended findings or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

#### ***Testimony and Questioning***

Once the Investigator(s) present their report and are questioned, the Parties and Witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the Parties through their Advisors ("cross-examination").

All questions posed by Parties through their advisors are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel or the Title IX Director on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with the Title IX Director, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

If a Party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that Party.

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted.

#### ***Refusal to Submit to Cross-Examination and Inferences***

Cross-examination is the process by which the Parties answer questions posed by the Advisor of the other Party, or in the case of Witnesses, the Advisor of both Parties.

The Decision-maker(s) may not draw any inference solely from a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.

#### ***Deliberation, Decision-Making and Standard of Proof***

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s) in consultation with other administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Director, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Director within two (2) business days of the end of

deliberations, unless the Title IX Director grants an extension. If an extension is granted, the Title IX Director will notify the Parties.

## **NOTICE OF OUTCOME**

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Using the deliberation statement, the Title IX Director will work with the Chair to prepare a Notice of Outcome. The Title IX Director will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the Parties and their Advisors within ten (10) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent addresses of the Parties as indicated in official College records, or emailed to the Parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to obtain evidence, and hearings held. The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## **SANCTIONS**

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Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in the [Sexual Misconduct, Relationship Violence and Stalking Policy](#) are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

## **APPEALS**

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Any Party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Director within five (5) business days of the delivery of the Notice of Outcome. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

- Typically, Appeals for students will be determined by the Associate Vice President for Student Affairs (or designee).
- Typically, Appeals for Staff will be determined by the Vice President for Business & Financial Affairs (or designee).
- Typically, Appeals for Faculty will be determine by the Faculty Grievance Committee/ President (or designee).
- Typically, Appeals of decisions made by the Title IX Director will be determined by the Senior Vice President and Secretary of the College (or designee).

### ***Grounds for Appeal***

The Request for Appeal will be forwarded to the Appellate Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Appeals are limited to the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
- C. The Title IX Director, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Complaint Resolution Procedure, that request will be denied by the Appellate Officer and the Parties will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds in the [Sexual Misconduct, Relationship Violence and Stalking Policy](#), then the Appellate Officer will notify the other Party(ies) and their Advisors, the Title IX Director, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other Party(ies) and their Advisors, the Title IX Director, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appellate Officer to all Parties for review and comment.

### ***Sanction Status During Appeal***

Any sanctions imposed as a result of the hearing are suspended during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If sanctions that remove or separate a Party from the College, a class, or housing are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for the

removal must be permitted within 48 hours of implementation. The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **LONG-TERM REMEDIES/ OTHER ACTIONS**

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Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Director may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. Examples of remedies/actions can be found in the [Sexual Misconduct, Relationship Violence and Stalking Policy](#).

At the discretion of the Title IX Director, certain long-term support or measures may also be provided to the Parties even if no policy violation is found. When no policy violation is found, the Title IX Director will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access. The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College's ability to provide these services.

### **FAILURE TO COMPLY WITH SANCTIONS AND/OR INTERIM AND LONG-TERM REMEDIES AND/OR RESPONSIVE ACTIONS**

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All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Director.

### **DISABILITY ACCOMMODATIONS**

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The College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's resolution process. Anyone needing such accommodations or support should contact the Director of the Student Access Center Services or Director of Human Resources if an employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Director, determine which accommodations are appropriate and necessary for full participation in the process.

### **REVISIONS OF THE SEXUAL MISCONDUCT, RELATIONSHIP VIOLENCE AND STALKING POLICY AND PROCEDURES**

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The [Sexual Misconduct, Relationship Violence and Stalking 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 processes, 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 the [Sexual Misconduct, Relationship Violence and Stalking 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.

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