



## College of the Atlantic Sexual Misconduct Policy

*COA complies with the Title IX changes that went into effect on August 14, 2020. Our Title IX Policy compliant with the final rule is also available on our website. Any report of behavior that meets the definitions in COA's Title IX Policy will be addressed using that policy. Other behavior will be addressed using the Sexual Misconduct Policy below.*

### **The College's Stance**

Members of the College of the Atlantic community, guests, and visitors have the right to be free from sexual misconduct and violence. This policy is intended to define community expectations, to establish definitions to aid in determining when behavior violates these expectations, and to outline the options available in response to sexual misconduct. It is our expectation that each individual will exhibit the respect, consideration, and responsibility that would prohibit sexual misconduct. Further, while we expect that individuals engaging in any kind of sexual activity will communicate clearly with each other, it is the responsibility of the person(s) pursuing sexual activity to ensure that she/he/they have the consent of any partner(s). An instance of sexual misconduct is a violation of the rights of the individual as well as a significant betrayal of the fundamental trust and values of our community. COA believes that rape, unwanted sexual contact, intimate partner violence, sex- or gender-based stalking, sexual harassment, and sexual exploitation are unacceptable and therefore sexual misconduct will not be tolerated.

The College will regard all reports of sexual misconduct as worthy of earnest response. It is our goal to provide prompt, effective, and sensitive assistance to anyone requesting support as a result of sexual misconduct. This includes taking action to protect community members from harm, to impose serious disciplinary consequences to ensure misconduct is not repeated, and to educate our community appropriately. The college will strive to empower people who have experienced sexual misconduct regarding decisions about notification, medical or other services, legal or campus action, and other matters. Previous behavior on the part of the person bringing a complaint (attire, intoxication, previous sexual history, etc.) will never be considered as grounds to justify sexual misconduct.

Included in this policy are:

- Definitions relevant to the policy
- Consequences of violating the policy
- College response options for support and action
- Confidentiality, notification, education, and training

## **Language**

COA recognizes that there is much discussion about appropriate terminology- victim or survivor. While we recognize the awkwardness of the construction, we have chosen to use “victim/survivor” in this document when describing resources available to those who report misconduct in recognition that each person should have the right to determine the language that best describes where they are in the process of coming to terms with what they have experienced. Where we are outlining our policy and procedure for addressing complaints, we use the term complainant for the person who has reported experiencing misconduct and respondent for the person(s) named in the complaint.

## **Scope**

This policy covers incidents or behavior that occur on campus (including farms and islands), off-campus, on COA-sponsored trips or programs in which one or more of the parties are members of the COA community.

## **Definitions**

For the purposes of this policy the following definitions are used:

### **Consent**

Consent is unambiguous, voluntary, and knowing agreement demonstrated by positive and active participation and cooperation between partners prior to and during a sexual encounter for any kind of sexual activity. Consent can only be given by a person with the capacity to do so and who has not been forced into doing so.

The following are offered to further understanding of the definition of consent:

- Consent can be given by word or action, but verbal consent is usually the clearest.
- Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity or the same activity again.
- Silence—without actions clearly demonstrating permission—cannot be assumed to show consent.
- Previous sexual encounters with or prior consent from the same partner(s) cannot be assumed to imply consent to future sexual acts.
- Consent given prior to or during an encounter does not preclude consent being withdrawn later in that same encounter.
- Consent needs to be obtained each time partners engage in sexual activity.

- Under this policy, “No” always means “No,” and “Yes,” if produced while a person is being coerced or does not have the capacity to consent, may not always mean “Yes.”

### **Sexual misconduct**

Sexual misconduct offenses include but are not limited to the following each to be defined further: Sexual Harassment, Sexual Exploitation, Sex- or Gender-Based Stalking, Intimate Partner Violence (Dating Violence and Domestic Violence), Sexual Assault—Unwanted Sexual Contact, Sexual Assault—Rape (or the attempt to commit such actions).

### **Sexual harassment**

- is unwelcome gender-based verbal or physical conduct
- that is sufficiently severe, persistent or pervasive
- that it unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from COA’s educational program, work environment, and/or activities
- and is based on the creation of a hostile environment, retaliation or quid pro quo.

*Note: The following behaviors are prohibited at COA and may also be covered in this policy if they are sex or gender-based:*

Bullying: defined as repeated and/or severe aggressive behavior that a reasonable person would find is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).

### **Sexual exploitation**

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Sexual exploitation includes, but is not limited to:

- Invasion of sexual privacy.
- Prostituting another student.
- Non-consensual video, audio, or any other methods of recording sexual activity.
- Non-consensual distribution of any form of recording of sexual activity.
- Non-consensual digital or online sexual behavior.
- Engaging in voyeurism without the consent of the parties having sex.

- Knowingly transmitting an STI or HIV to another student.
- Exposing one's genitals in non-consensual circumstances.
- Inducing another to expose their genitals.

### **Sex or gender-based stalking**

Sex or gender-based stalking is defined as repetitive and/or menacing pursuit, following, harassment, contact, and/or interference with the peace and/or safety of a member of the community on the basis of sex or gender; or the safety of any of their immediate family members.

### **Sexual assault—unwanted sexual contact**

Sexual assault—unwanted sexual contact is any intentional sexual touching, however slight, with any body part or foreign object, by a person upon another person regardless of gender, that is without consent and/or by force.

Sexual contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals.
- Touching another with any of these body parts.
- Making another touch you or themselves with or on any of these body parts.
- Any intentional bodily contact in a sexual manner that doesn't involve contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

### **Sexual assault—rape**

Sexual assault—rape is any sexual intercourse however slight, with any body part or foreign object, by a person upon another person regardless of gender, that is without consent and/or by force.

Intercourse includes vaginal sex, anal sex, and oral sex, no matter how slight the penetration or contact.

### **Incapacity**

Incapacity is the lack of ability to consent resulting from mental disability, sleep, lack of consciousness, involuntary physical restraint, alcohol intoxication, or from the consumption of drugs including but not limited to rohypnol, ketomine, GHB, burundanga, etc.

*NOTE: Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to consent if they lack the capacity to reasonably understand the situation. Understanding is demonstrated by knowledge of who, what, when, where, why, or how.*

*In situations where alcohol or drug use are involved, if one person is incapable of functioning and the other, capable of functioning, takes advantage or exploits the first person's incapacitation—there is no consent.*

Administering drugs to another person for the purpose of reducing inhibitions, gaining or rendering a person incapable of giving consent is a violation of this policy.

### **Force**

Force is the use of physical violence and/or the imposition on someone physically to gain sexual access and can also include threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. The absence of resistance does not imply the absence of force.

*NOTE: The use of physical force including partner (domestic or dating) violence, constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restraint, battery, etc.) would face consequences not just for sexual misconduct, but also additional consequences for assaultive behavior. Similarly, emotional abuse used to control, isolate, or manipulate another person constitutes misconduct for which additional consequences can be imposed.*

### **Coercion**

Coercion is when one person is pressured unreasonably for and/or manipulated into sex and is clearly distinct from seduction. Coercing someone into sexual activity violates that person's agency and autonomy and this policy in the same way as physically forcing someone into sex.

### **Retaliation**

Retaliation is any adverse action directed against a person as a result of that person making a complaint, participating in an investigation, or being part of the resolution of a complaint of discrimination or sexual misconduct. Behaviors deemed retaliatory could be the basis for a separate complaint.

## **Consequences of Violating the Sexual Misconduct Policy**

The misconduct hearing process is detailed in a separate policy. However it is relevant to include here that COA never assumes a community member is in violation of COA policy without due process. Hearings are conducted to take into account all evidence available, from all relevant sources.

In addressing sexual assault and other forms of sexual misconduct, not just those acts that would meet a criminal standard, COA aims to uphold our community expectations of respect, the right to autonomy, and a campus environment that is safe for all.

Not all forms of misconduct covered in this policy will be deemed to be equally serious offenses, and COA reserves the right to impose different consequences, ranging from verbal warning to expulsion/employment termination, depending on the severity of the offense.

That said, the following are offered as guidelines for hearing boards when addressing complaints of sexual misconduct:

- Any student/employee found responsible for violating the policy on sexual harassment or sexual exploitation, or sex- or gender-based stalking will likely receive a recommended consequence ranging from warning to expulsion/employment termination, depending on the severity of the incident, and taking into account any previous campus conduct code violations.
- Any student/employee found responsible for violating the policy on Intimate Partner Violence (Domestic Violence and Dating Violence) or Sexual Assault—Unwanted Sexual Contact (where no intercourse has occurred) will likely receive a consequence ranging from probation to expulsion/employment termination, depending on the severity of the incident, and taking into account any previous campus conduct code violations.
- Any student/employee found responsible for violating the policy on Sexual Assault—Rape will likely face a recommended consequence of suspension or expulsion/employment termination.

Those responsible for determining consequences for a person(s) found responsible for a policy violation may ask the complainant for an impact statement to aid in their determinations.

The person reviewing a request for appeal should follow the range of recommended consequences unless compelling justification exists to do otherwise.

COA will consider the concerns and rights of both the person bringing a complaint of sexual misconduct and the person accused of sexual misconduct when addressing sexual misconduct complaints. The procedure for addressing complaints under this policy is designed to provide fundamental fairness to all parties. Resources are available to all parties as appropriate to assist them through the process of addressing a complaint. This includes a provision that all parties have an advisor of their choosing present at any meeting related to a complaint.

## **Response**

COA will work with anyone who has experienced sexual misconduct to make accommodations and offer appropriate services. COA reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect community members' rights and safety. Options available to victims/survivors may include but are not limited to changes to housing or work situations, changes to course or work schedules, access to medical and counseling services including transportation, limited or no contact agreements with persons involved, and campus disciplinary procedures, as well as assistance in accessing legal options including reporting misconduct to the police. COA may also choose to institute interim suspension from campus pending a hearing when appropriate.

## **Amnesty**

Any person, who in the course of seeking support for being sexually assaulted, admits to a violation of COA policy will be granted amnesty and will not face disciplinary action or consequences for that policy violation (ex. underage drinking or use of illegal drugs).

## **Options for Support and Pursuing Action**

When seeking support or reporting sexual misconduct, all parties should be aware of confidentiality, privacy and reporting requirements in order to make informed choices. Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at COA and upon COA policy. Individuals are encouraged to ask questions about a person's ability to maintain confidentiality or to maintain privacy, before consulting and are reminded that they do not have to share any information that they do not wish to share when seeking support.

### **To seek confidential support**

Individuals wishing to maintain absolute confidentiality can seek support from COA mental health counselors and nurses, the COA Confidential Resource Advisor (Pamela Gagnon da Silva, LCPC), from other mental health practitioners or clergy in town, or from our community partners working with victims/survivors of sexual assault. Campus counselors are available to help you free of charge. These people can offer you confidentiality, discuss options and offer advice without any obligation to tell anyone unless you want them to do so.

### **To seek support and have personally identifiable information remain private**

Individuals can seek support and or advice from most college employees (faculty members, advisors, RAs, student life staff, etc ) and have their private, personally identifiable information shared only with the Title IX Coordinator or their designee (unless there is cause to fear for the individual's safety, or the safety of others). College employees will be required to report some basic information (name of complainant, date, location, category of misconduct/crime, potential for danger, name of respondent if known). The sharing of this information is to help the Title IX Coordinator to determine if there is a pattern of behavior or repeated instances of misconduct that need to be addressed to protect the safety of the community as a whole. This information will only be shared as necessary with as few people as possible, and all efforts will be made to protect the complainant's privacy. Any person reporting who does not wish to be contacted by or speak with the Title IX Coordinator or their designee is not required to do so, except in situations where the report reveals a possible threat to the complainant or other members of the community. Information about available resources and support will be shared with the complainant through the employee with whom the complainant shared the initial report.

### **To take action and make a formal complaint (non-confidential)**

In order to begin a disciplinary process, leading to possible administrative action and/or an investigation and a resolution that can end in the consequences described in the appropriate section above, individuals are encouraged to make a formal complaint to the Title IX Coordinator. Formal reporting means that only people who need to know will be told, and information about the complainant will be shared only as necessary with investigators, witnesses, and the accused individual.

### **Delegation of authority to determine procedure for addressing complaints**

The Student Life Committee has responsibility for determining the procedure for implementing this policy. Minor changes to the procedure will be made by the committee and reported out to the community. If the committee deems a change to be a major revision, then it will consult with



the community and other appropriate groups or experts for input. The committee will then make a recommendation for review by the community as a whole before changes will take effect.

## **Education and Information Sharing**

### **Informing the COA community and federal statistical reporting obligations**

In accordance with the federal regulations, the report of statistical information will be shared with the Title IX Coordinator, the Director of Public Safety and the Dean of Student Life. All college employees, including RAs, but excluding campus counselors, have a duty to report instances of sexual misconduct according to federal reporting guidelines. All personally identifiable information is kept confidential (except in circumstances involving ongoing danger or potential threats of bodily harm) but the date, the location of the incident (on or off campus) and the category of misconduct/crime must be passed along to the Title IX Coordinator and director of public safety for publication in the Annual Security Report required by the federal government. This reporting protects the identity of the victim/survivor and may be done anonymously.

The Annual Security Report helps provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. This report is available online and will be distributed to the COA community. Copies can also be requested from the Director of Public Safety.

COA will also issue an addendum to the Annual Security Report that will include statistics about sexual misconduct not mandated to be reported by the Clery Act. Sexual misconduct is significantly underreported nationwide and can contribute to a false sense of security. Reporting all incidents of sexual misconduct will keep the COA community informed of the true frequency of these events.

### **Federal timely warning reporting obligations**

Victims/survivors of sexual misconduct should also be aware that COA must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. COA will make every effort to ensure that a victim/survivor's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The persons responsible for issuing timely warnings are the Director of Public Safety and the Dean of Student Life. These notifications will be made using our emergency notification system and/or by email.

## **Education and training**

COA recognizes the importance of raising awareness of the issues surrounding sexual misconduct and assault. Therefore we commit ourselves to ensuring that community members (students, faculty and staff) have adequate information on this topic and are offered appropriate training on consent, sexual misconduct and our policies and procedures on a regular basis. We further commit to ensuring that those responsible for responding to those who have experienced sexual misconduct or those responsible for addressing sexual misconduct complaints have been sufficiently trained to carry out those responsibilities with sensitivity, compassion, and fairness.

## **Procedure for Addressing Complaints Of Sexual Assault and Misconduct Policy**

College of the Atlantic takes all reports of sexual misconduct and gender discrimination very seriously. Upon receipt of notice of possible misconduct, an initial inquiry will be undertaken to determine if there is reasonable cause to believe the policy has been violated. If so, COA will initiate a prompt, thorough, and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether our policy has been violated. If so, then we will implement a prompt and effective remedy designed to end the behavior, prevent its recurrence and address its effects.

Community members who wish to report a concern or complaint of sexual misconduct or gender-based discrimination may do so by contacting COA's Title IX Coordinator: Puranjot Kaur, [pkaur@coa.edu](mailto:pkaur@coa.edu), 207.288.5015, ext. 5614. Reports can also be made to any employee of the college who will forward the report to the Coordinator as soon as is reasonably feasible.

The College will assist any Individuals who wish to make a report to the police or any individual can make a report to the police directly by calling the Bar Harbor Police at 911 or 207.288.3392.

Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department of Education:

Office for Civil Rights (OCR), 400 Maryland Avenue, SW Washington, DC 20202-1100

Customer Service Hotline: 800-421-3481 Facsimile: 202-453-6012

TDD#: 877-521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

Employees can also contact the Maine Human Rights Commission:

Maine Human Rights Commission  
51 State House Station  
Augusta, ME 04333-0051  
Phone: 207-624-6050  
TTY/TTD: 207-624-6064  
FAX: 207-624-6063

### **Formal and informal procedures for complaints**

The COA community benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns that community members may have that fall under the Sexual Assault and Misconduct policy. For the remainder of this procedure the following terms will be used to refer to various involved parties. Reporter will refer to the person bringing the concern to the attention of the Title IX Coordinator. Complainant will refer to the person who has been the focus of the unwelcome behavior. Respondent will refer to the person accused of the unwelcome behavior. Witness will refer to any person who may have information relevant to the complaint who is not the complainant or respondent.

### **Informal resolution efforts**

In some cases and depending on the nature and severity of the complaint, informal resolution of concerns may be possible. We encourage community members to make every reasonable effort to constructively resolve issues with students, faculty, staff, or administrators whenever it is possible and safe to do so. We do not require community members to contact the person involved if doing so is impracticable, or if there is a belief that the conduct cannot be effectively addressed through informal means. Complaints of sexual assault—rape are not handled through informal resolution given the potential risks and threats involved even if the complainant and respondent would agree to do so. Anyone seeking assistance in pursuing an informal resolution can contact the Title IX Coordinator for assistance in understanding the options.

### **Formal complaint process**

COA's Title IX Team is designated to formally investigate complaints, address inquiries and coordinate COA's procedures. Notice of a formal complaint can be made in person, orally or in writing, to any employee of the College, but preferably a member of the Title IX team. All employees who receive such a complaint must inform the Title IX Coordinator, Puranjot Kaur, as soon as is reasonably feasible. Regardless of the format the notice takes, the team member interacting with the reporter will gather basic information: description of the alleged incident(s), when and where it occurred, and any safety concerns. The reporter or complainant should also include the name and any contact information for the respondent, if known. Any supporting

documentation, names of witnesses, and evidence should be provided as soon as is possible in the process.

### **Participation in the formal complaint process**

Both the complainant and the respondent can identify an advisor of their choosing to assist them throughout the process (academic advisor, colleague, peer, attorney, etc). If either party chooses to have an advisor, they should inform the investigation team of the identity of the advisor in advance of their meeting. This advisor may be, but is not required to be a member of the COA community. The role of the advisor is to provide support and guidance to either the complainant or the respondent, but not to direct the process or formally represent the complainant or respondent. It is recommended that an individual assuming the role of advisor in this process meet with the Title IX Coordinator to ensure that they understand their role and, its limitations. The advisor has access to whatever information the complainant or respondent chooses to share with them and with the understanding that the advisor will abide by the expectations of confidentiality in our process. At the investigators' discretion, anyone, including an advisor, disrupting the process can be removed.

Both the complainant and the respondent have the right to petition the Title IX Coordinator to have any member of the process removed on the basis of a substantiated conflict of interest/bias. The Coordinator shall make the final determination as to whether such a conflict of interest or bias exists.

No audio or video recording of any kind is permitted in any meeting as part of a complaint process.

The goal of this process is to provide an equitable resolution via an equitable process, respecting the rights of all participants.

### **Receipt of notice:**

Upon receipt of notice of a possible violation the Title IX Coordinator will open a formal case file. The Title IX Coordinator will share information with the complainant about resources for support, options for action, explanations of informal and formal resolution processes as appropriate to the circumstances and will assess safety and potential threats to the individual and the community as a whole. The Title IX Coordinator will work with the complainant to determine the need for appropriate interim measures, accommodations for the complainant, or other necessary remedial short-term actions.

### **Initial inquiry:**

The Title IX Coordinator will conduct an initial inquiry or will assign investigators from the Title IX Team who will conduct the preliminary inquiry in order to:

- Identify any relevant policies that may have been violated
- Determine if there is reasonable cause to believe that a policy has been violated and if COA has jurisdiction to act

If it is determined in the initial inquiry that there is insufficient evidence to support reasonable cause to believe the report is a violation of the college's policy, the complaint will be closed.

### **Comprehensive investigation:**

The investigation team selected from members of the Title IX team will take the following steps in the order that makes most sense for the particular circumstances:

- Meet with the Title IX Coordinator to review the initial information of the complaint
- Interview the complainant to finalize the complaint (except in cases where the college is bringing the complaint in which case investigators will interview the college representative standing as proxy)
- Work with the Title IX Coordinator to prepare and send the notice of investigation for the respondent on the basis of the preliminary inquiry
  - Accommodations including access to counseling and other support will be made available to the respondent through the Title IX Coordinator
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the respondent
- At an appropriate time given the specific circumstances of the case and based on the presence of sufficient evidence to proceed, work with the Title IX Coordinator to prepare an additional notice of charges for the respondent, if charges will be pursued that were not listed in the original notice of investigation
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline
  - It should be noted that in this procedure the investigation process is the hearing. The investigation will be conducted in a manner that offers (at the appropriate point) both the complainant and the respondent the opportunity to review and respond to relevant information gathered as part of the investigation

- Parties also have the right to be informed of the names of all witnesses who provide statements except where the identity of a witness is not revealed for compelling safety reasons
- Consult with the Title IX Coordinator to ensure that a thorough, reliable, and impartial investigation has occurred

### **Finding:**

- Make a finding, based on a preponderance of the evidence standard, also known as “more likely than not” or “50% plus a feather” as to whether or not a violation has occurred
- Write a comprehensive report of the investigation
- Share the report with the Title IX Coordinator for review

### **Consequences:**

If the respondent is found responsible for any policy violations, then the investigators will consult with the Title IX Coordinator and another trained member of the team, not previously involved in the case, to determine appropriate sanctions/consequences following the guidelines outlined in the policy.

### **Share outcomes:**

- Share the findings and outcomes with the respondent and the complainant within 48 hours of the decision or determination of sanctions (whichever comes later), along with information on the process and criteria for requesting an appeal
- Notify all parties with a “need to know” of the final resolution to the case to ensure implementation of any sanctions/consequences and to take action to prevent a reoccurrence and to remedy any adverse effects on the complainant and the community

### **Request for appeal:**

A request to appeal the findings of the investigation or the sanctions/consequences can be directed to the Title IX Coordinator who will empanel an appeal board to review the request for appeal. The appeal board will be composed of 3 trained individuals not previously involved in the case and with whom there is no conflict of interest with either the complainant or the respondent. Either party may appeal and must make the request for appeal within 3 business days of receiving the written decision. A request for appeal must be made in writing and must provide

evidence to support one of the grounds for appeal outlined below. Any request for appeal will be shared with the other involved party who will be offered the opportunity to provide a response to be reviewed along with the request for appeal. The request for appeal and responses will then be forwarded to the appeals board for initial review to determine if the appeal meets the limited grounds for appeal and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and that decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately.

### **Grounds for appeal:**

The ONLY grounds for appeal are as follows:

- A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)
- To consider new evidence, unavailable during the original investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included (Not providing information, not cooperating, or not fully participating during the investigation process does not constitute the basis for appeal on grounds of new evidence.)
- Finding is clearly erroneous. In this case the Appeals Board must be definitely and firmly convinced that the investigators' decision was implausible in light of all the evidence, not just that they might have weighed the evidence and reached a different conclusion
- The sanctions imposed are substantially outside the parameters or guidelines set by the college in the Sexual Assault and Misconduct Policy or are disproportionate to the violation

### **Actions for appeals board:**

If the appeals board determines that a material procedural error occurred, it may return the complaint to the original team with instructions to reconvene to cure the error. In rare cases, where the procedural error cannot be cured by the original team (as in cases of bias), the appeals board will work with the Title IX Coordinator to determine appropriate action which could include beginning a new investigation. The results of a reconvened investigation team cannot be appealed. The results of a new investigation can be appealed, once, on the four applicable grounds for appeals.

If the appeals board determines that new evidence should be considered, it will return the complaint to the original investigation team to reconsider their decision in light of the new evidence only. Their decision based on this reconsideration is not appealable.

If the appeals board determines that the decision is erroneous, then it will return the complaint to the investigation team with instructions to reconvene to cure the error. In circumstances where the error cannot be cured by the investigation team, the appeal board can render an alternate decision.

If the appeals board determines that the sanctions imposed are outside the parameters set by the college without appropriate cause for deviation or are disproportionate to the violation, the appeals board will return the complaint to the team who made the determination to modify the sanctions.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision
- Appeals are not intended to be full reinvestigations of the complaint (de novo). In most cases, appeals are confined to a review of the written investigation report, and pertinent documentation regarding the grounds for appeal
- Appeals decisions are to be deferential to the original team, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so
- The appeals board will render a written decision on the appeal to all parties within seven (7) business days from receipt of the documentation provided for an appeal after the initial review has determined that the appeal has standing. The appeal board's decision to deny appeal requests is final
- All sanctions resulting from the investigation will be in effect during a request for appeal and will remain in effect unless altered as a result of a final outcome of an appeal. A request may be made to the Title IX Coordinator for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships, residencies, final projects, etc. do NOT in and of themselves constitute exigent circumstances, and community members may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the community member to their prior status, recognizing that some opportunities lost may be irretrievable in the short term



## **Special Procedure Provisions**

### **Attempted violations**

In most circumstances, COA will treat attempts to commit any of the violations listed in the policy as if those attempts had been completed.

### **College as complainant**

As necessary, COA reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.

### **False reports**

COA will not tolerate intentional false reporting of incidents. It is a violation of our community expectations and the policy to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

### **Immunity for victims and witnesses**

The COA community encourages the reporting of sexual misconduct violations and crimes. Sometimes, people are hesitant to report to the college or participate in the formal complaint procedure because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many people as possible choose to report, and that witnesses come forward to share what they know. To encourage reporting, COA pursues a policy of offering complainants and witnesses amnesty from policy violations related to the incident as long as the policy violation did not result in injury or harm to another.

### **Bystander engagement**

The welfare of people in our community is of paramount importance. At times, community members on and off-campus may need assistance. COA encourages community members to offer help and assistance to others in need. Sometimes, community members are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help a sexual misconduct victim seek medical attention or support). The college pursues a policy of amnesty for students who offer help to others in need as long as the policy violation did not result in injury or harm to another.

### **Notification of outcomes and FERPA**

The outcome of a complaint procedure is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. However, COA observes the legal exceptions as follows:

- Complainants in sexual assault, sexual exploitation, sexual harassment (including stalking and relationship violence) incidents have an absolute right to be informed of the findings and sanctions of the investigation, in writing, without condition or limitation.
- COA may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a COA policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. COA will release this information to the complainant in any of these offenses regardless of the outcome.

### **Past sexual history/character**

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the investigators. All such information provided will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request. While previous conduct violations by the respondent are not generally admissible as information about the present alleged violation, the Title IX Coordinator may supply previous complaint information to the investigators, only if:

1. The accused was previously found to be responsible
2. The previous incident was substantially similar to the present allegation
3. Information indicates a pattern of behavior and substantial conformity with that pattern by the accused party