



Policy for Addressing Formal Complaints Under the Title IX Regulations

I. College of the Atlantic's Stance

Members of College of the Atlantic ("College" or "COA") community, guests, and visitors have the right to be free from discrimination and harassment on the basis of sex. Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance.

This Policy for Addressing Formal Complaints Under the Title IX Regulations ("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 discrimination and harassment on the basis of sex. It is the College's expectation that each individual will exhibit the respect, consideration, and responsibility that would prohibit discrimination and harassment.

This Policy is also intended to continue COA's efforts to prevent and remedy discrimination and harassment based on sex.

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law.

II. Scope

This Policy applies to COA students and employees who allege that they have experienced discrimination and/or harassment by a member of the College community, including, but not limited to students, employees, alumni, prospective students and employees, vendors, and visitors to campus. The College reserves the right to continue a grievance process detailed in this Policy, even if a student withdraws from COA or an employee ends their employment at the College during the process.

When the Respondent is a member of the College community, one of the grievance processes detailed below may be available regardless of the status of the Complainant, who may or may not be a member of the College community. However, the College's ability to take disciplinary action against a Respondent may be dependent on the Respondent's status within the College

community. The College's ability to take disciplinary action against a Respondent who is not part of the College community will be limited and is determined by the context of the conduct and the College's relationship to the Respondent.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate support measures. The College may take other actions to protect the Complainant against a third-party Respondent, such as barring the Respondent from College property and/or events.

III. Jurisdiction

This Policy covers conduct that meets the following criteria:

- The conduct is alleged to have occurred on or after August 14, 2020¹;
- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in COA's education program or activity;
- The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

Information shared or posted online, including on social media, can also violate this Policy, if it creates a hostile learning or working environment.

IV. Standard of Proof

COA uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing, further detailed below, seeks to determine whether it is more likely than not that a violation of this Policy occurred.

V. Definitions

For the purposes of this Policy, the following definitions apply:

Coercion

Coercion is when one person is pressured unreasonably for and/or manipulated into sex and is

¹ The Title IX Policy is effective as of August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

clearly distinct from seduction. Coercing someone into sexual activity violates that person's agency and autonomy and is prohibited by this Policy in the same way as physically forcing someone into sex.

Complainant(s)

Complainant(s) means any individual(s) who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this Policy.

Confidential Employee

Confidential employees are College employees that have a professional obligation to protect confidential information that the confidential employee receives in the performance of their professional duties. Confidential employees can include mental health professionals, other medical professionals, and clergy.

Education Program or Activity

For the purposes of this Title IX Policy, COA's "education program or activity" includes:

- Any on-campus premises; including COA's farms, islands, and additional properties.
- Any off-campus premises over which COA has substantial control.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of COA's programs and activities over which COA has substantial control.

Effective Consent

Effective consent means words or actions that show an unambiguous, voluntary, and knowing agreement to engage in mutually agreed-upon sexual activity. Effective 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 guidance is offered to further understanding of the definition of effective consent:

- Effective consent can be given by word or action, but verbal consent is usually the clearest.
- Effective 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.
- Effective consent given prior to or during an encounter does not preclude consent being withdrawn later in that same encounter.
- Effective consent needs to be obtained each time partners engage in sexual activity.

- Certain states have a designated minimum age under which a person cannot give effective consent.

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.

Formal Complaint

For the purposes of this Title IX Policy, “formal complaint” means a document – including an electronic submission – filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within COA’s education program or activity and requesting initiation of the procedures consistent with the Policy to investigate the allegation of sexual harassment.

Grievance Process

Grievance Process will be an overarching term used to refer to the informal resolution and formal investigation processes that may be used by the College to resolve a matter reported to the College, when the Title IX Coordinator determines that the alleged prohibited conduct, if proven, would violate this Policy.

Incapacity

Incapacity is the lack of ability to make rational, reasonable decisions because the individual lacks the capacity to give knowing consent (e.g., to understand the “who,” “what,” “when,” “where,” or “how” of their sexual interaction). A person may be incapacitated because of consumption of drugs and/or alcohol; mental or physical disability; being asleep; a lack of consciousness; and/or lack of awareness that the sexual activity is occurring.

When drugs or alcohol are involved, incapacitation is a state beyond impairment or intoxication and involves an assessment of the person’s decision-making ability; awareness of consequences; ability to make informed, rational judgements; capacity to appreciate the nature and quality of the act; and/or level of consciousness. This assessment is based on objectively and reasonably apparent signs of incapacitation when viewed from the perspective of a sober, reasonable person.

Parties

Parties refers to the Complainant(s) and Respondent(s), collectively.

Privacy vs. Confidentiality

References to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean COA offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. COA will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.

Prohibited Conduct

Prohibited conduct will refer to any of the alleged conduct, detailed below, that violates the Policy.

Relevant Evidence and Questions

“Relevant” evidence and questions includes any question or evidence that tends to make an allegation of sexual harassment more or less likely to be true.

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless;
 - They are offered to provide that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Evidence and questions about the following are not relevant:
 - Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
 - Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

Reporter

Reporter will refer to the person bringing the alleged prohibited conduct to the attention of a responsible employee, including, but not limited to the Title IX Coordinator or designee.²

Respondent(s)

Respondent(s) means any individual who has been reported to be the perpetrator of alleged prohibited conduct that could constitute covered sexual harassment, as defined under this Policy.

² The Title IX Coordinator has discretion to delegate any responsibilities detailed in this Policy to an appropriately trained individual within the College or hired by the College, when the need arises.

Responsible Employee

Responsible employee refers to any employee of the College who is not a confidential employee. Responsible employees are required to disclose any reports of alleged discrimination and/or harassment to the Office of Title IX and Civil Rights Compliance within 24-48 hours of receiving the report.

VI. Prohibited Conduct Under This Policy

For the purposes of this Policy, Title IX prohibited conduct is conduct on the basis of sex that satisfied one or more of the following:

- A. Quid Pro Quo Harassment:** An employee conditioning educational benefits on participation in unwelcome sexual conduct;
- B. Sexual Harassment:** Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity.
- C. Sexual Assault—*as defined in the Clery Act*:** Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent, including:
 - a. Rape:** Vaginal or anal penetration, however slight, with a body part or object, or oral penetration involving mouth to genital contact.
 - b. Criminal Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Criminal Sexual Contact also includes the forced touching by the Complainant of the Respondent's clothed or unclothed body parts, without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

This offense includes instances where the Complainant is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

- c. **Incest:** Non-forcible sexual intercourse between people who are related to each other within the degrees wherein marriage is prohibited. In the State of Maine, a person may not marry that person's parent, grandparent, child, grandchild, sibling, nephew, niece, aunt, or uncle.
- d. **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. In the State of Maine, consent cannot be given by minors who are 14 or 15, if the actor is at least 5 years older than the minor. Consent cannot be given by minors under 14 years of age, regardless of the age of the Respondent. For this reason, any sexual act with an individual under 14 years of age is considered a felony.

D. Dating Violence—*as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act:* Any violence committed by a person who is or has been in the social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of relationship; the frequency of interaction between the persons involved in the relationship.

E. Domestic Violence—*as defined in the VAWA amendments to the Clery Act:* Includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Maine domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Maine.

F. Stalking—*as defined in the VAWA amendments to the Clery Act:* Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

Alleged prohibited conduct that does not meet one or more of these criteria may still be prohibited under COA's Discrimination and Harassment Policy or other relevant policies.

VII. Response and Supportive Measures

Supportive measures are non-punitive, non-disciplinary, individualized services offered to a Complainant or a Respondent following a report or before or after the initiation of a grievance process. Possible supportive measures may include but are not limited to: counseling or mental

health services, temporary academic accommodations, campus escort services, No Contact Orders between parties, changes in work or housing locations, and leaves of absence.

VIII. Title IX Grievance Process

A. Options for Support and Pursuing Action: When seeking support or reporting covered sexual harassment, individuals should be aware of confidentiality, privacy, and reporting requirements in order to make informed choices. Different College employees have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at COA and upon COA policy. Reporters are encouraged to ask questions about an employee's ability to maintain confidentiality or to maintain privacy before consulting and are reminded that reporters do not have to share any information that they do not wish to share when seeking support.

- 1. Confidential Support:** Reporters who are members of the COA community, who are not responsible employees, and who wish to maintain absolute confidentiality can seek support from COA's confidential employees, which include COA mental health counselors, nurses, and the Confidential Resource Advisor. COA mental health counselors are available to help students free of charge and may be made available to College staff and faculty by the Title IX Coordinator. All confidential employees can offer individuals confidentiality, discuss options, and offer advice without any obligation to tell anyone unless you want them to do so. Additionally, reporters can seek confidential resources external to COA from other mental health practitioners or clergy in town.
- 2. Seeking Support Where Personally Identifiable Information Remains Private:** Responsible employees, who are not confidential employees, will be required to report information reported to them (including name of Complainant, date, location, category of misconduct/crime, potential for danger, and name of Respondent, if known) to the Title IX Coordinator. This information will only be shared as necessary on a need-to-know basis, and all efforts will be made to protect the Complainant's privacy.

Any reporter and/or Complainant who does not wish to speak with the Title IX Coordinator is not required to do so. However, the Title IX Coordinator will send the reporter and/or Complainant information about available resources and support. Additionally, if the reporter is identified as a Complainant in a grievance process detailed below or if a

Complainant can be identified from the report, the Complainant will receive status updates from the Title IX Coordinator regarding the status of the grievance process but will not be required to respond to the status updates or participate in the grievance process.

B. Making a Report Regarding Covered Sexual Harassment to the College: Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Name: Puranjot Kaur

Title: Title IX Coordinator and HR Support

Address: 105 Eden Street, Bar Harbor, ME 04609

Office Location: Third Floor of Deering Common

Email Address: pkaur@coa.edu

Telephone Number: 207.288.5015, ext. 5614 (Office)

Responsible employees who receive a report of potential discriminatory and/or harassing conduct must inform the Title IX Coordinator within 24-48 hours. The responsible employee receiving the report will gather basic information from the reporter, including: a description of the alleged incident(s), when and where it occurred, and any safety concerns of the reporter. The reporter should also include the name and any contact information for the Respondent, if known.

An individual, other than a responsible employee, can make a confidential report to the Title IX Coordinator using the College's anonymous reporting feature ([linked here](#)) without disclosing their own identity or the identity of the Respondent. The Title IX Coordinator will assess the report using the same intake process detailed below, however, depending on the amount of information provided, the College may not be able to take further action to respond to the report.

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
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

Under the Policy, there is no time limit on reporting potential prohibited conduct, but reporters are encouraged to report prohibited conduct as soon as possible after the incident(s) in order to ensure the report can be most effectively investigated.

- C. Amnesty for Personal Use of Drugs or Alcohol:** COA recognizes that students may be reluctant to seek assistance from COA officials or emergency services for themselves or others after experiencing prohibited conduct under this Policy because they fear being held responsible under COA's Student Code of Conduct for alcohol or drug violations relating to an incident. When a student reports prohibited conduct under this Policy that involves drug or alcohol usage by the reporting student and/or other students involved, COA will not conduct a formal process under the Student Code of Conduct for drug or alcohol usage, provided that the misconduct did not endanger other's health and/or safety. However, COA does not extend this protection to the distribution of drugs or alcohol and/or the provision of alcohol and/or drugs to another individual for the purpose of inducing incapacitation as defined in the Policy.
- D. False Reporting:** COA takes false reporting of allegations under this Policy seriously and false reporting may be subject to disciplinary action. This does not include good faith reports where the ultimate determination does not result in a finding of responsibility for a Policy violation.

E. Interim Measures: The College may remove a student Respondent who may have engaged in prohibited conduct from all or part of an educational program or activity on an emergency basis after the College undertakes an individualized safety and risk analysis; determines there is a risk of imminent danger to the health or safety to member(s) of the College community arising from the allegations of covered sexual harassment; and provides the Respondent with notice of removal and an opportunity to challenge the decision immediately following the removal.

The College may place an employee Respondent on administrative leave for the duration of a grievance process, detailed below. The College will determine if the administrative leave during the process should be imposed with or without pay benefits.

The College may temporarily withhold a student's degree when the student is named Respondent in a pending grievance process detailed in this Policy, until the completion of the resolution process.

F. Initial Intake: Upon receipt of a report, the Title IX Coordinator will offer to meet with the reporter and/or the Complainant to gather any additional information necessary to conduct an initial assessment regarding whether the alleged conduct may violate the Policy. The Title IX Coordinator will also share information about resources for support, options for action, and explanations of grievance processes, as appropriate to the circumstances. The Title IX Coordinator will work with the Complainant to determine the need for appropriate interim measures, accommodations for the Complainant, and/or other necessary, short-term remedial actions.

G. Filing a Formal Complaint: The timeframe for the Title IX Process begins with the filing of a formal complaint. The College will make a good faith effort to complete a grievance process within ninety (90) business days but may extend the timeline for good cause.

To file a formal complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a formal complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of COA, including as an employee. For Complainants who do not meet these criteria, the College will utilize the existing [Discrimination and Harassment Policy](#).

If a Complainant does not wish to make a formal complaint, the Title IX Coordinator may determine that the specific circumstances warrant the Title IX Coordinator signing a formal complaint on behalf of the College. When conducting this assessment, the Title IX Coordinator will consider if the allegations detailed in the initial report show a risk to the health and/safety of the College community, such that it requires the College to pursue a Title IX grievance process to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, abuse of minors, threats, predatory conduct, use of weapons, violence, and/or other compelling safety risks.

COA will inform the Complainant of this decision in writing. When the Title IX Coordinator determines that it is necessary for the College to file a formal complaint, the College does not become the Complainant and instead the Complainant remains the individual who is alleged to be the victim of prohibited conduct, as defined by this Policy. The Complainant retains the ability to designate their level of participation in the Title IX grievance process and retains the rights afforded under this Policy, irrespective of their level of participation.

Nothing in the Title IX Policy prevents a Complainant from seeking assistance of state or local law enforcement alongside the appropriate on-campus process.

H. Initial Inquiry: Following receipt of a report, an intake meeting, and/or the filing of a formal complaint, the Title IX Coordinator will conduct an initial inquiry to:

- Identify any potential prohibited conduct that may violate this Policy; and
- Determine whether the alleged conduct, if proved by a preponderance of the evidence standard, would reasonably constitute prohibited conduct. If it is determined in the initial inquiry that there is insufficient evidence to support that the alleged conduct, if proven, would reasonably constitute prohibited conduct of the Policy, the complaint will not proceed through the grievance processes detailed below.

I. Dismissal: The Title IX Coordinator may dismiss a formal complaint brought under the Policy, or any specific allegations raised within the formal complaint, at any time during the grievance process for the following reasons:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations raised in the formal complaint;

- The Respondent is no longer enrolled or employed by the College; or,
- If specific circumstances prevent COA from gathering sufficient evidence to reach a determination regarding the formal complaint or allegations within the formal complaint.

If the Title IX Coordinator determines that the allegations contained in the formal complaint would not constitute prohibited conduct under the Policy, the Title IX Coordinator may refer the matter to the applicable administrator to provide the Complainant and/or reporter with resources, dismiss the complaint, and/or close the matter.

Upon reaching a decision that the formal complaint will be dismissed, the College will promptly send written notice of the dismissal of the formal complaint or any specific allegation within the formal complaint, and the reason for the dismissal, simultaneously to the parties.

Upon dismissal for the purposes of Title IX, COA retains discretion to utilize other COA policies including but not limited to COA's Discrimination and Harassment Policy, to determine if a violation of COA policy has occurred. If so, COA will promptly send written notice of the dismissal of the formal complaint under the Title IX grievance process and removal of the allegations to a separate College conduct process.

The parties may appeal the dismissal of a complaint on the limited grounds in the "Appeals" section below.

IX. Title IX Grievance Process

If the Title IX Coordinator determines that the alleged prohibited conduct, if proven, would violate the Policy, the College may use an informal resolution process, or the formal investigation process detailed below, to resolve the matter.

- A. Consolidation:** The Title IX Coordinator may consolidate formal complaints alleging covered sexual harassment against one or more Respondent, or by one or more Complainant against one or more Respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.
- B. Allegations Potentially Falling Under Two Policies:** If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and

conduct that would not constitute covered sexual harassment, the Title IX Process will be applied to investigation and adjudication or informal resolution of all allegations arising from the same facts and circumstances.

- C. Advisors:** Parties are allowed to designate one (1) advisor, who may or may not be an attorney, to assist them during a Title IX grievance process.

Except where explicitly stated by this Policy, advisors shall not participate directly in the grievance process. Parties participating in a Title IX grievance process may be accompanied by an advisor to any meeting or hearing conducted as part of the grievance process. The advisor is not an advocate and may not be a witness in the matter.

COA's obligation to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under this Policy, and COA cannot agree to extensive delays solely to accommodate the schedule of an advisor. The determination of what is reasonable shall be made by the Title IX Coordinator.

- D. Notice of Meetings and Interviews:** COA will provide, to a party whose participation is invited, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

- E. Informal Resolution Process:** Informal resolution is an alternative resolution process that does not include a full investigation and is typically a spectrum of facilitated, adaptable processes between the Complainant and the Respondent, that seeks to identify and meet the needs of the parties, acknowledge harm, and repair the harm experienced by the Complainant and/or the College community.

At any time after receiving the formal complaint of alleged prohibited conduct and prior to the completion of the formal grievance process, either party may request an informal resolution process. If either party seeks informal resolution, the party may submit a written request to the Title IX Coordinator. The Title IX Coordinator reserves the right to determine if the informal resolution process is appropriate, given the facts and circumstances of the matter.

The College and both parties must agree, in writing, to the initiation of the informal resolution process. At any time prior to finalizing an informal resolution agreement, any party has the right to withdraw from the informal resolution

process and resume the formal grievance process with respect to the formal complaint. The Title IX Coordinator has the discretion to terminate an informal resolution process, at any time, if the Title IX Coordinator determines that informal resolution is not appropriate to resolve a complaint.

The Title IX Coordinator will assign a trained internal or external facilitator to facilitate the informal resolution. The informal resolution facilitator will not be the same person as the investigator(s) or decision maker in the formal investigation process and will be free from conflict of interest or bias.

At the conclusion of the informal resolution process, the parties will sign an informal resolution agreement, detailing the terms of the resolution agreement, that the Title IX Coordinator has accepted the terms, and that the parties are precluded from resuming or restarting the formal grievance process for the formal complaint.

The College does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

F. Formal Grievance Process

a. Investigation

- i. Notice of Allegations and Investigation:** At the commencement of an investigation, the Title IX Coordinator will provide the Notice of Allegations and Investigation to the parties.

The Notice of Allegations will include the following:

- Notice of the initiation of the investigative process and a hyperlink to the copy of the Policy; and
- Notice of the allegations potentially constituting covered sexual harassment and sufficient details known at the time the Notice is issued;
- A statement that the Respondent is presumed not responsible for the alleged prohibited conduct and that a determination regarding responsibility is made at the conclusion of the process;
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;

- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a part or other source; and
- A statement referring to the availability of informal resolution.

The College will provide at least three (3) business days for the parties to review the Notice of Allegations and prepare a response before any initial interview.

If, in the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered “sexual harassment” falling within the Title IX Policy, the College will notify the parties of the additional allegations. The parties will be provided with three (3) business days to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

- ii. Initial Investigation:** The Title IX Coordinator will designate an investigator(s) to perform an investigation of the alleged prohibited conduct.

COA, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from COA and does not indicate responsibility.

Over the course of the investigation, the investigator(s) may gather evidence by collecting relevant documents and electronic evidence, interviewing parties and witnesses, and/or reviewing additional

information provided by parties and witnesses.

The investigator(s) will record and transcribe all interviews over the course of the investigation.

COA will provide an equal opportunity for the parties to participate in investigation interviews, present witnesses, including facts and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

COA cannot access, consider, or disclose medical records without a waiver from the party to whom the records belong or of whom the records include information.

iii. Inspection and Review of Evidence: Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the directly related evidence obtained through the investigation. It will include any:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the College in making a determination regarding responsibility; and
- Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a part or other source.

The College will make the evidence available for each party and each party's advisor, if any, to inspect and review. The parties and their advisors must sign an agreement to not download, disseminate, photograph, or otherwise copy the evidence subject to inspection and review. The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator(s). The investigator(s) will consider the parties' written responses before completing the investigative report.

iv. Investigative Report: The investigator(s) will create an investigative report that fairly summarizes the relevant evidence

and will provide that report to the parties at least ten (10) business days prior to the hearing for each party's review and written response.

- b. Hearing:** COA will not issue a disciplinary outcome or consequence arising from an allegation of prohibited conduct under this Policy without holding a live hearing unless otherwise resolved through an informal resolution process.

The College will appoint a trained internal or external hearing officer to serve as the decision maker at the hearing. The hearing officer will not serve as the Title IX Coordinator, investigator(s), or advisor to any party in the matter. The hearing officer will not have a conflict of interest or bias in favor of or against either party or Complainants and/or Respondents generally. The parties will have two (2) business days from receipt of the name of the hearing officer to submit an objection in writing regarding the appointment of the hearing officer based on actual or perceived conflicts of interest or bias, with specific evidence supporting the objection.

Neither party can waive the right to a live hearing. The parties are not required to participate in the live hearing, but the College will proceed with the live hearing in the absence of a party due to lack of participation. COA will not threaten, coerce, intimidate, or discriminate against the party in an attempt to secure the party's participation. The hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at COA's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other.

The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney to accompany them to the hearing. The advisor of choice may not speak for the party, except for the purpose of cross-examination. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the College will select an advisor to serve

in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party. If the party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. Advisors shall be subject to the institution's rules of decorum and may be removed upon violation of those rules.

The parties and/or hearing officer can request a witness who participated in the investigation attend the hearing, but a witness cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

For all live hearings conducted under this formal grievance process, the hearing officer will first open and establish rules and expectations for the hearing. The parties will each be given the opportunity to provide opening statements. The hearing officer will ask questions of the parties and witnesses. The parties will be given the opportunity for live cross-examination after the hearing officer conducts their initial round of questioning, which will be conducted by the party's advisor, not the party. Before any cross-examination is answered, the hearing officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the hearing officer, may be deemed irrelevant if they have been asked and answered. During the parties' cross-examination, the hearing officer will have the authority to pause cross-examination at any time for the purpose of asking the hearing officer's follow up questions; and any time necessary in order to enforce the established rules of decorum. Should a party or the party's advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the hearing officer. A party's waiver of cross-examination does not eliminate the ability of the hearing officer to use statements made by the party and/or witness.

Any information not provided to the investigator(s) prior to the final investigative report will not be allowed during the hearing unless the party offering the evidence can clearly demonstrate that such information was not reasonably available at the time of the investigation or the evidence has significant relevance to a material fact at issue in the investigation. The hearing officer will consider the information and make a determination regarding (1) whether such information was actually unavailable by reasonable effort prior to the hearing, and (2) whether such

information could affect the outcome of the matter. The party offering the newly-discovered evidence has the burden of establishing these questions by the preponderance of the evidence.

All proceedings will be recorded through audiovisual recording and transcribed. That transcript will be made available to the parties for inspection and review upon request.

- c. Written Determination Regarding Responsibility:** Following the hearing, the hearing officer will draft a written determination regarding responsibility (determination), which will then be issued simultaneously by the Title IX Coordinator to the parties. The determination will include:
- i.** Identification of the allegations potentially constituting prohibited conduct under this Policy;
 - ii.** A description of the procedural steps taken from the receipt of the formal complaint through the determination;
 - iii.** Findings of fact supporting the determination;
 - iv.** Conclusions regarding which COA policy, if any, the Respondent has or has not violated.
 - v.** For each allegation:
 - A statement of, and rationale for, a determination regarding responsibility; and
 - The permitted reasons for the Complainant and Respondent to appeal (described below in “Appeal”).

The hearing officer may only consider relevant evidence when making a determination regarding responsibility. The hearing officer will not consider evidence about the Complainant’s sexual predisposition or prior sexual behavior, except in the limited circumstances detailed above. The hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’ absence from the hearing or refusal to participate in cross-examination.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

- d. Outcomes/Consequences:** If the Respondent is found responsible for any Policy violations, the Title IX Coordinator will convene the appropriately positioned and trained College employee or external individual, who is free from conflict of interest and bias and who was not previously involved in the formal grievance process, to determine appropriate outcomes/consequences following the guidelines outlined in the Policy.

In addressing forms of prohibited conduct, COA aims to uphold community expectations of respect, the right to autonomy, and a campus environment that is safe for all.

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

X. Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcomes of the matter (i.e. a failure to follow the institution's own procedures);
- 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;
- The Title IX Coordinator, investigator(s), hearing officer, and/or individual appointed to determine outcomes and/or consequences had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcomes of the matter.

Appeals may be no longer than five (5) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these

standards.

The submission of appeal puts any decisions or outcomes/consequences on hold until the appeal is resolved. Supportive measures remain available during the pendency of the appeal.

Any request for appeal will be shared with the other party involved who will be offered the opportunity to provide a response to be reviewed along with the request for appeal. If the other party chooses to submit a response to the request for appeal, they must do so within five (5) business days.

Appeals will be decided by an internal or external appeal officer, who will be appointed by the Title IX Coordinator, who will be free of conflict of interest and bias, and who did not serve as investigator(s), Title IX Coordinator, or hearing officer in the same matter. The appeal officer will review the appeal to see if it meets the limited grounds for appeal and is timely. The original finding and outcome/consequence will stand if the appeal is not timely or substantively eligible, and that decision is final. The party requesting the appeal must show error, as the original finding and outcome are presumed to have been decided reasonably and appropriately.

The outcome of the appeal will be provided in writing simultaneously to both parties and will include rationale for the decision. The appeal officer's outcome of appeal is final.

XI. Retaliation

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Title IX Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for other policy violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of sexual harassment.

Complaints alleging retaliation may be filed according to the College's Discrimination and Harassment Policy.