



**WILLIAM JAMES  
COLLEGE**

**EQUAL OPPORTUNITY, HARASSMENT, AND  
NON-DISCRIMINATION POLICY FOR ALL FACULTY,  
STUDENTS, EMPLOYEES, AND THIRD PARTIES**

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**WILLIAM JAMES COLLEGE'S  
EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY FOR ALL FACULTY,  
STUDENTS, EMPLOYEES, AND THIRD PARTIES  
(the "Policy")**

**1. Definitions**

- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process, advise the party on that process, and conduct questioning for the party at the hearing, if any.
- **Administrator.** The person with primary responsibility for overseeing and enforcing the Policy and Resolution Process. As used in this Policy, the term "Administrator" also includes the Administrator's designee(s), including, without limitation, the Title IX Coordinator (if a single College employee does not occupy both roles).
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs corrective action(s), accordingly.
- **College.** William James College.
- **Complainant.** An individual who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, or Other Prohibited Conduct under the Policy.
- **Confidential Resource.** An employee who is not a Mandated Reporter of Notice of discrimination, harassment, retaliation, and/or Other Prohibited Conduct under this Policy (irrespective of Clery Act Campus Security Authority status).
- **Day.** A business day when the College is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person who reviews evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence.** Evidence connected to the allegations, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker. Compare to Relevant Evidence, below.
- **Education Program or Activity.** Locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the discrimination, harassment, retaliation, and/or Other Prohibited Conduct occurs. This includes any building owned or controlled by a student organization that the College officially recognizes.
- **Employee.** A person employed by the College on a full- or part-time basis, including student employees, when acting within the scope of their employment.
- **Final Determination.** A conclusion, reached by a preponderance of the evidence standard of proof, that the alleged conduct did or did not violate the College's Policy.

- **Finding.** A conclusion, reached by a preponderance of the evidence standard of proof, that the conduct did or did not occur as alleged (as in, a “finding of fact”).
- **Formal Complaint.** A document submitted or signed by a Complainant or signed by the Administrator alleging a Respondent engaged in discrimination, harassment, retaliation, and/or Prohibited Conduct under this Policy and requesting that the College investigate the allegation(s).
- **Formal Grievance Process.** A method of formal resolution designated by the College to address allegations that a Respondent engaged in discrimination, harassment, retaliation and/or Prohibited Conduct under this Policy, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Administrator that occurs prior to a Final Determination being reached.
- **Investigation Report.** The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by the College to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- **Mandated Reporter.** A College employee who is obligated by Policy to share knowledge, Notice, and/or reports of discrimination, harassment, retaliation, and/or Other Prohibited Conduct with the Administrator.<sup>1</sup>
- **Nondiscrimination Team.** The Administrator and Title IX Coordinator (if different), any deputy Title IX coordinators, and any member of the Formal Grievance Process Pool.
- **Notice.** When an employee, student, or third party informs the Administrator or other member of the Nondiscrimination Team of the alleged occurrence of discriminatory, harassing, retaliatory, and/or Other Prohibited Conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristic.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or College Policy.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s Education Program and Activity.

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.
- **Resolution.** The result of the Formal Grievance Process or Informal Resolution.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Student.** Any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the College.
- **Title IX Coordinator.** At least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. The Administrator may be the Title IX Coordinator. References to the Title IX Coordinator throughout this Policy may also encompass a designee of the Title IX Coordinator for specific tasks.

## 2. Purpose

The College is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the College has developed policies and procedures that provide a prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment, or retaliation.

## 3. Scope

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in the College's program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s), and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

## 4. Nondiscrimination Team Contacts

The College has appointed the Nondiscrimination Team, comprised of the following individual(s), including members of the Formal Grievance Process Pool, to coordinate the College's compliance with federal, state, and local civil rights laws and ordinances:

**Sandy Tente**  
Title IX Coordinator  
Director of Talent, Equity and Culture  
1 Wells Avenue  
Room 525  
Newton, MA 02459  
(617) 327-6777 Ext. 1182  
[sandy\\_tente@williamjames.edu](mailto:sandy_tente@williamjames.edu)

### **Formal Grievance Process Pool**

The College relies on a pool of individuals (the “Pool”) to carry out the procedures of the Resolution Process for resolving allegations of discrimination, harassment, retaliation, and/or Other Prohibited Conduct as defined in the Policy.<sup>2</sup>

#### **A. Pool Member Roles**

Members of the Pool are trained annually and can serve in the following roles, at the discretion of the Administrator:

- Appropriate intake of and initial guidance pertaining to Formal Complaints
- Perform or assist with initial assessment
- Advisor to Parties
- Informal Resolution Facilitator
- Investigator
- Hearing Facilitator
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

#### **B. Pool Member Appointment**

The Administrator, in consultation with other senior administrators of the College as necessary, appoints the Pool, which acts independently and impartially. Although members of the Pool are typically trained in a variety of skillsets and can rotate amongst the different roles listed above in different Formal Complaints, the College may also designate permanent roles for individuals in the Pool.

#### **C. Pool Member Training**

See [Appendix D](#) for a description of and links to the training materials for Pool members.

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<sup>2</sup> Trained third-party neutrals may also serve in Pool member roles.

#### **D. Pool Members**

The following individuals are members of the College's Pool:

**Dr. Sarabeth Golden**

Associate Professor of Clinical Psychology  
sarahbeth\_golden@williamjames.edu

**Dr. Katelyn Peretti**

Associate Professor, Counseling and Behavioral Health Department  
Director, Forensic and Correctional Counseling Area of Emphasis  
kaitlyn\_peretti@williamjames.edu

**Dr. Lisa King Chalukian**

Assistant Professor, School Psychology Department  
lisa\_chalukian@williamjames.edu

**Dr. Nadja Lopez**

Executive Director of BHELS  
Director, Graduate Certificate in Leading Transformative Mental Health in  
Schools nadja\_lopez@williamjames.edu

Collectively, members of the Nondiscrimination Team are responsible for providing comprehensive nondiscrimination education and training; coordinating the College's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

The College recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other College policies; may involve various combinations of students, employees, and other members of the College community; and may require the simultaneous attention of multiple College departments. Accordingly, all College departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

## **5. Independence and Conflict of Interest**

The Administrator manages the Nondiscrimination Team and acts with independence and authority, free from bias and conflicts of interest. The Administrator oversees all resolutions under this Policy and these procedures. The members of the Pool are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Administrator, contact the College President:

**Dr. Nicholas Covino**  
President  
William James College  
1 Wells Avenue  
5th Floor Suite  
Newton, MA 02459  
(617) 327-6777, Ext. 1281  
nicholas\_covino@williamjames.edu

Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Nondiscrimination Team member should be raised with the Administrator.

## **6. External Contact Information**

Concerns about the College's application of this Policy and compliance with certain federal civil rights laws may be addressed to:

**Office for Civil Rights (OCR)**  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 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>

**OCR Boston Office**  
U.S. Department of Education  
9th Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
TDD: (800) 877-8339

Email: OCR.Boston@ed.gov

For allegations of employee-on-employee misconduct:

**Equal Employment Opportunity Commission (EEOC):**

EEOC Boston Area Office  
JFK Federal Building  
15 New Sudbury Street, Room 475  
Boston, MA 02203-0506  
Telephone: 1-800-669-4000  
Fax: 617-565-3196

**Massachusetts Commission Against Discrimination (MCAD):**

Shared email for all MCAD locations: [mcad@mass.gov](mailto:mcad@mass.gov)

MCAD Boston Headquarters  
1 Ashburton Place, Ste. 601, Boston, MA 02108  
Telephone: (617) 994-6000

MCAD Worcester Office  
18 Chestnut Street, Room 520, Worcester, MA 01608  
Telephone: (508) 453-9630

MCAD Springfield Office  
436 Dwight Street, Room 220, Springfield, MA 01103  
Telephone: (413) 739-2145

**7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

A report provides the College Notice of an allegation or concern about discrimination, harassment, retaliation, and/or Other Prohibited Conduct and provides an opportunity for the Administrator to provide information, resources, and supportive measures. A Formal Complaint informs the College that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Formal Complaint. Reports or Formal Complaints of discrimination, harassment, retaliation, and/or Other Prohibited Conduct may be made using any of the following options:

File a report or Formal Complaint with, or give verbal Notice to, the Administrator or to any member of the Nondiscrimination Team. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office of the Administrator or any other Nondiscrimination Team member listed in this Policy.

Report online by submitting an incident report. Anonymous incident reports are accepted but may give rise to a need to try to determine the Parties' identities. Anonymous reports typically limit the College's ability to investigate, respond, and provide remedies, depending upon what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous reports.

Reporting carries no obligation to file a Formal Complaint, and in most situations, the College is able to respect a Complainant's request to not initiate an investigation or other appropriate resolution procedures. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the College may need to initiate an investigation or other appropriate resolution procedures. If a Complainant does not wish to file a Formal Complaint, the College will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by submitting a report that allows the College to discuss and/or provide supportive measures, in most circumstances.

As used in this Policy, the term "Formal Complaint" means a document or electronic submission (such as by electronic mail or through an online portal provided by the College for this purpose) that (i) contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and (ii) requests that the College investigate the allegations. If Notice is submitted in a format that does not meet this standard, the Administrator will contact the Complainant to determine whether the Complainant is requesting that the College initiate an investigation or other appropriate resolution procedures.

## **8. Supportive Measures**

The College will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, retaliation, and/or Other Prohibited Conduct. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all Parties and/or the College's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Administrator promptly makes supportive measures available to the Parties upon receiving Notice or a Formal Complaint. At the time that supportive measures are offered, if a Formal Complaint has not been filed, the College will inform the Complainant, in writing, that they may file a Formal Complaint with the College either at that time or in the future. The Administrator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the College's ability to provide those supportive measures. The College will act to ensure as minimal an academic/occupational impact on the Parties as

possible. The College will implement measures in a way that does not unreasonably burden another party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Referral for visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Implementing contact limitations (i.e., no-contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing grievance process under this Policy.

## **9. Emergency Removal/Interim Actions/Leaves**

The College can act to remove a student Respondent accused of Sexual Harassment from its education program or activities, partially or entirely, 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 Coordinator and may be done in conjunction with other risk-assessment professionals using standard objective violence risk assessment procedures.<sup>3</sup> Students accused of other forms of discrimination (not sex) are subject to interim suspension, which can be imposed for safety reasons.

Employees are subject to existing procedures for interim actions and leaves.

## **10. Confidentiality/Privacy**

The College makes every effort to preserve the Parties' privacy. The College will not share the identity of any individual who has made a report of discrimination, harassment, retaliation, or Other Prohibited Conduct; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, retaliation, or Other Prohibited Conduct; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable

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<sup>3</sup> See [Appendix C](#).

laws and regulations (e.g., Title IX), the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.<sup>4,5</sup> Additional information regarding confidentiality and privacy can be found in Appendix B.

## **11. Jurisdiction**

This Policy applies to the College's Education Program and Activities, including the College's employees' work environments, to conduct that takes place on property owned or controlled by the College, at College-sponsored events, and in any building owned or controlled by a College-recognized student organization.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to the College's education program or activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial College interest.

A substantial College interest includes:

Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.

Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.

Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.

Any situation that substantially interferes with the College's educational interests or mission.

For disciplinary action to be issued under this Policy for Title IX Sexual Harassment, the Respondent must be a College faculty member, student, or employee at the time of the Formal Complaint. For allegations other than Title IX Sexual Harassment, the College may issue disciplinary action under this Policy if the Respondent was a College faculty member, student, or employee at the time of the alleged misconduct. If the Respondent is unknown or is not a member of the College community, the Administrator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

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<sup>4</sup> 20 U.S.C. 1232g

<sup>5</sup> 34 C.F.R. § 99

When the Respondent is enrolled in or employed by another institution, the Administrator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Administrator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment at or within the College, those effects can often be addressed remedially by the Administrator if brought to their attention.

## **12. Time Limits on Reporting**

There is no time limitation on providing Notice/Formal Complaints to the Administrator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Administrator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

## **13. Online Harassment and Misconduct**

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

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

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

## **14. Notice of Nondiscrimination**

The College seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private post-secondary education institutions.

The College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Age (40 years and over in the employment context)
- Color
- Creed
- Disability (physical or mental)
- Domestic violence victim status
- Ethnicity and ethnic characteristics
- Genetic information (including family medical history)
- National origin (including shared ancestry)
- Pregnancy or related conditions
- Race
- Religion
- Sex
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran), or
- Any other protected characteristic under applicable federal, state, or local law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment and/or social access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s) listed above, is in violation of the College's Nondiscrimination Policy.

The College will promptly and effectively address any such discrimination of which it has Notice using the Resolution Process.

#### **15. Disability-based Grievances and Complaints**

Grievances related to disability status and/or provision of accommodations are addressed through Accessibility Services and/or the College's Section 504 Officer (for students), or through the Human Resources Office (for employees). However, allegations of discrimination on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under this Policy and its Resolution Process.

#### **16. Prohibited Conduct**

Students and employees are entitled to an educational and employment environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit

educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under College Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of College Policy, though supportive measures may be offered to those impacted.

All offense definitions encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other College policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

#### **A. Discrimination**

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or Policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) **Disparate Treatment Discrimination:**

Any intentional differential treatment of a person that is based on a person's actual or perceived protected characteristic and that:

- Excludes a person from participation in;
- Denies the person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a College program or activity.

2) **Disparate Impact Discrimination:**

Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:

- Excludes a person from participation in;
- Denies the person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a College program or activity.

## **B. Discriminatory Harassment**

Unwelcome conduct on the basis of actual or perceived protected characteristic(s), that:

- Based on the totality of the circumstances,
- Is subjectively and objectively offensive, and
- Is so severe or pervasive,
- That it limits or denies a person's ability to participate in or benefit from the College's education program or activity

## **C. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Massachusetts Commission Against Discrimination (MCAD) regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

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

The College has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

### **3) Title VII Sexual Harassment**

Applies to situations where an employee is subjected to workplace sexual harassment that is:

- Unwelcome verbal, written, graphic, and/or physical conduct,
- Severe or pervasive and objectively offensive,
- On the basis of sex/gender, that
- Unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

**Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Administrator. Sexual Harassment includes:

Conduct on the basis of sex, or that is sexual in nature, that constitutes one or more of the following:

4) **Quid Pro Quo:**

- An employee of the College,
- Conditions (explicitly or implicitly) the provision of an aid, benefit, or service of the College,
- On an individual's participation in unwelcome sexual conduct.

5) **Sexual Harassment (Hostile Environment):**

- Unwelcome conduct,
- Determined by a reasonable person,
- To be so severe, and
- Pervasive, and,
- Objectively offensive,
- That it effectively denies a Complainant equal access to the College's education program or activity.<sup>6</sup>

6) **Sexual Assault:**<sup>7</sup>

a. **Rape:**

- Penetration by the Respondent, no matter how slight,
- Of the vagina or anus of the Complainant,
- With any body part or object, or
- Oral penetration by the Respondent of a sex organ of the Complainant, or
- Oral penetration of the Complainant by the Respondent's sex organ,
- Without the consent of the Complainant.

b. **Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts) by the Respondent,
- For the purpose of sexual gratification,
- Without the consent of the Complainant,

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<sup>6</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>7</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

- Including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

**c. Incest:**

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Massachusetts law.

**d. Statutory Rape:**

- Sexual intercourse,
- with a person who is under the statutory age of consent in Massachusetts (i.e., 16 years of age).

**7) Dating Violence:**

- Violence,<sup>8</sup>
- On the basis of sex,
- Committed by a person,
- Who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

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

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

**8) Domestic Violence:<sup>9</sup>**

- Violence,
- On the basis of sex,
- Committed by: (i) a current or former spouse or intimate partner of the Complainant; (ii) a person with whom the Complainant shares a child in

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<sup>8</sup> Throughout this Policy, "violence" is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose of self-defense is safety, not harm.

<sup>9</sup> Throughout this Policy, "violence" is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose of self-defense is safety, not harm.

common; (iii) a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Massachusetts; or (v) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Massachusetts.

9) **Stalking:**

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the Complainant, that
- Would cause a reasonable person to fear for the person's safety, or
- The safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition—

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

**D. Sexual Misconduct**

10) **Sexual Exploitation:**

- Any person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above,
- For their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Electronically distributing (e.g., Airdropping, Snapchatting) nude or sexual photos or videos of another person without their consent
- Invasion of sexual privacy (e.g., doxxing)

- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Unwelcome or offensive exposure of one's genitals to one or more persons, and other lewd or indecent conduct as defined by Massachusetts law.

#### **E. Other Prohibited Conduct**

##### **11) Bullying:**

- Repeated and/or severe aggressive behavior,
- That is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant, and

- That is not speech or conduct that is otherwise protected by the First Amendment.

12) **Endangerment:**

- Threatening or causing physical harm,
- Extreme verbal, emotional, or psychological abuse, or
- Other conduct which threatens or endangers the health or safety of any person or damages their property.

13) **Hazing:**

- Any act or action,
- Which does or is likely to endanger the mental or physical health or safety of any person,
- As it relates to a person's initiation, admission into, or affiliation with any College group or organization.

For the purposes of this definition, it is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or organization, for an allegation of hazing to be upheld.

It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.

The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.

The Massachusetts Hazing Law provides that the principal organizer(s) or participant(s) in hazing may be punished by a fine of not more than three thousand dollars, imprisonment for not more than one year, or both. The law also requires that whoever knows that another person is the victim of hazing and is at the scene of the hazing shall, to the extent possible without danger to themselves or others, report the hazing to an appropriate law enforcement official as soon as reasonably practicable. Failure to report such hazing may be punished by a fine of not more than one thousand dollars.

All student groups, teams, and organizations (a) recognized by the College; (b) permitted by the College to use its name or facilities; or (c) known by the College to exist as an unaffiliated student group, team or organization, shall distribute a copy of the Massachusetts Hazing Law to each of its members, plebes, pledges, or applicants for membership. Each such group, team, or organization, through its designated officer, shall deliver annually to the College an attested acknowledgement stating that such group, team, or organization received a copy of the Massachusetts Hazing Law and that

each of its constituents has received a copy of sections 17 and 18 of the statute, and that such group, team, or organization understands and agrees to comply with the law.

All questions concerning the Massachusetts Hazing Law or this policy should be directed to:

**Stacey Lambert, PsyD**

Vice President for Academic Affairs

Professor and Chair, Clinical Psychology Department

William James College

1 Wells Avenue

Room 510

(617) 327-6777, Ext. 1288

stacey\_lambert@williamjames.edu

**14) Retaliation**

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

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Resolution Process. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**15) Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of Administrator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution
- Intentional failure to comply with mandated reporting duties as defined in this Policy

- Intentional interference with the Resolution Process, including, but not limited to:
- Destroying or concealing of evidence
- Seeking or encouraging false testimony or providing false testimony or evidence
- Intimidating or bribing a witness or party

## F. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Discrimination:** reprimand/warning through expulsion or termination.
- **Discriminatory Harassment:** reprimand/warning through expulsion or termination.
- **Title VII Sexual Harassment:** reprimand/warning through expulsion or termination.
- **Quid Pro Quo Harassment:** reprimand/warning through expulsion or termination.
- **Sexual Harassment:** reprimand/warning through expulsion or termination.
- **Rape:** suspension through expulsion or termination.
- **Fondling:** reprimand/warning through suspension (termination for employees).
- **Incest:** reprimand/warning through restrictions/probation.
- **Statutory Rape:** reprimand/warning through suspension (termination for employees).
- **Stalking:** restrictions/probation through expulsion or termination.
- **Dating/Domestic Violence:** restrictions/probation through expulsion or termination.
- **Sexual Exploitation:** reprimand/warning through expulsion or termination.
- **Bullying:** reprimand/warning through expulsion or termination.
- **Endangerment:** reprimand/warning through expulsion or termination.
- **Hazing:** reprimand/warning through expulsion or termination.
- **Retaliation:** reprimand/warning through expulsion or termination.
- **Failure to Comply/Process Interference:** reprimand/warning through expulsion or termination.

## G. Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

- 1) Consent:
  - Knowing, and
  - Voluntary, and
  - Clear permission
  - By word or action

- To engage in sexual activity.

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

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

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

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

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness

during otherwise consensual sex, those acts may constitute dating violence or sexual assault.<sup>10</sup>

2) **Force:**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) **Incapacitation:**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

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

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## **H. Unethical Relationships Policy**

There are inherent risks in any romantic or sexual relationship between persons in unequal positions, such as faculty member-student or supervisor-employee. In reality, these relationships may be less consensual than perceived by the person whose position

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<sup>10</sup> Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

confers power or authority. Similarly, each of the Parties may view the relationship differently, particularly in retrospect. Circumstances may change, and once welcomed conduct may become unwelcome at some point in the relationship.

Even when the Parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the College's goals and policies. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or other evaluative responsibilities who are involved in such relationships must promptly inform their supervisor and/or the Administrator. The existence of this type of relationship will likely result in the College's removal of the supervisory or evaluative responsibilities from the employee or reassignment of the party to prevent supervision or evaluation by someone with whom the party has established a consensual relationship. When an applicable relationship existed prior to adoption of this Policy or prior to a party's employment, the duty to notify the appropriate supervisor still applies.

While no consensual relationships are specifically prohibited by this Policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Administrator will determine whether to refer violations of this provision to the College's Human Resources personnel for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

## **17. Mandated Reporting**

All College faculty and employees (including student-employees), other than those deemed Confidential Employees (listed below), are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, retaliation, and/or Other Prohibited Conduct to the Administrator or other member of the Nondiscrimination Team immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal College action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Administrator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Administrator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

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

**A. Confidential Resources**

To enable Complainants to access support and resources without filing a Formal Complaint, the College has designated specific employees as Confidential Resources. Those designated by the College as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator’s contact information and offer options and resources without any obligation to inform an outside agency or College official unless a Complainant has requested the information be shared.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following:

Name, Title	Contact Information
<b>Sheldon Aaron</b> Assistant Professor, Counseling & Behavioral Health Department	sheldon_aaron@williamjames.edu Office Location: 314G Phone: (617) 327-6777, Extension 2378
<b>Joan Axelrod</b> Director of the Academic Resource Center	joan_axelrod@williamjames.edu Office Location: 450 Phone: (617) 327-6777, Extension 1341
<b>Dr. Robyn Bratica</b> Associate Professor, School Psychology Department	robyn_bratica@williamjames.edu Office Location: 208M Phone: (617) 327-6777, Extension 1019
<b>Dr. Matthew Carper</b> Assistant Professor, Clinical Psychology Department	matthew_carper@williamjames.edu Office Location: 208C Phone: (617) 327-6777, Extension 1074
<b>Ellen Collins</b> Associate Director of Payroll & Benefits	ellen_collins@williamjames.edu Office Location: 544 Phone: (617) 327-6777, Extension 1531
<b>Amanda Omalek</b> Department Coordinator, Organizational & Leadership Department	amanda_omalek@williamjames.edu Office Location: 215G Phone: (617) 327-6777, Extension 2301
<b>Dr. Marta Pagan-Ortiz</b> Assistant Professor Clinical Psychology Department	marta_paganortiz@williamjames.edu Office Location: 208N Phone: (617) 327-6777, Extension 1076
<b>Dr. Susan Powell</b> Professor, Counseling & Behavioral Health Department	susan_powell@williamjames.edu Office Location 314A Phone: (617) 327-6777, Extension 1229

The College may have faculty and employees who have confidentiality obligations bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and mental health counselors (such individuals, “Confidential Professionals”). Confidential Professionals are Mandated Reporters under this Policy unless: (a) designated above, or (b) these Confidential Professionals (i) have established a confidential relationship with a Complainant or other reporting party within the scope of their licensure or role (e.g., a lawyer-client or therapist-patient relationship); (ii) the Complainant or third party reports actual or suspected discrimination, harassment, retaliation, and/or Other Prohibited Conduct to such Confidential Professional within the scope of the established confidential relationship; and (iii) no other applicable law, policy, or court order requires the Confidential Professional to report or otherwise disclose the information received about the reported actual or suspected discrimination, harassment, retaliation, and/or Other Prohibited Conduct.

Employees who have confidentiality obligations as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

The College offers an Employee Assistance Program through UNUM. This service is provided at no cost to employees who work at least 24 hours a week. Employees may call and speak confidentially to a master’s level consultant to help you or a family member to locate child or elder care, speak with financial experts, help with personal or work issues, help with depression or grief, or issues surrounding substance abuse, and much more.

Toll-free, 24-hour access:

- 800-854-1446: English
- 877-858-2147: Spanish
- 800-999-3004 TTY/TOD

Online access: [www.lifebalance.net](http://www.lifebalance.net); user ID and password: lifebalance.

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, retaliation, or Other Prohibited Conduct of which they become aware is a violation of College Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of discrimination, harassment, or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with the College without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers who are not employed by the College.
- Local rape crisis counselors, such as Boston Area Rape Crisis Center (BARCC). For assistance 24 hours a day, contact the BARCC hotline at 800-841-8371.
- Domestic violence resources, such as Casa Myrna Vasquez. For assistance 24 hours a day, contact the SafeLink hotline, a Massachusetts toll-free domestic violence hotline, at 877-785-2020.
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

The following hospitals are part of the Sexual Assault Nurse Examiner Program (SANE). This program has specially trained nurses who examine patients and collect evidence. They will also call the Boston Area Rape Crisis Center (BARCC) and a trained Medical Advocate who are available to meet at the hospital.

SANE nurses are available at:

- Beth Israel Deaconess Boston Medical Center, 330 Brookline Avenue, Boston, MA 02215, Phone: 617-667-7000
- Brigham and Women's Hospital, 75 Francis Street, Boston, MA 02115, Phone: 617-732-5500
- CHA Cambridge Hospital, 1493 Cambridge Street, Cambridge, MA 02139, Phone: 617-665-1000
- Massachusetts General Hospital, 55 Fruit Street, Boston, MA 02114, Phone: 617-726-2000
- MA General/Brigham, Newton Wellesley Hospital, 2014 Washington Street, Newton, MA 02462, Phone: 617-243-6000

The following centers may also be able to provide assistance:

#### Northeastern Massachusetts

**YWCA North Shore Rape Crisis Center**, Lynn, (800) 922-8772 Hotline, (781) 477-2312 (Office)

**Center for Hope and Healing**, (800) 542-5212 Hotline, (978) 452-8723 TTY

**YWCA of Greater Lawrence**, (877) 509-9922 SA Hotline, (978) 686-8840 TTY

#### Central Massachusetts

**Pathways for Change**, Worcester, (800) 870-5905 Hotline, (888) 887-7130 TTY Rape Crisis Center of Central Massachusetts, Fitchburg, (800) 870-5905

**Wayside Victim Services**, Milford, (800) 511-5070 Hotline, (508) 478-4205

Southeastern Massachusetts

**A Safe Place**, Nantucket, (508) 228-2111 Hotline, (508) 228-7095 TTY

**Independence House/Cape Cod Rape Crisis Center**, Hyannis, (800)-439-6507 Hotline, (508) 778-6782 TTY

**Martha's Vineyard Community Services/CONNECT to End Violence**, Vineyard Haven, (508) 696-7233 Hotline, (508) 684-8176 TTY

**New Bedford Women's Center**, New Bedford, (508) 996-6636 Hotline, (508) 996-1177 TTY

**New Hope**, Attleboro, (800) 323-4673 Hotline/TTY

**Health Imperatives**, Brockton, (508) 588-8255 SA Hotline, (508) 894-2869 TTY

Western Massachusetts

**Elizabeth Freeman Center**, Pittsfield, (866) 401-2425 Hotline, (413) 499-2425 TTY

**Center for Women and Community**, Amherst, (413) 545-0800 Hotline, (413) 577-0940 TTY

**NELCWIT**, Greenfield, (413) 772-0806 Hotline, (413) 772-0815 TTY

**YWCA of Western Massachusetts**, Springfield, (800) 796-8711 Hotline, (413) 733-7100 TTY

As the above contact information may be subject to change, current contact information on rape crisis centers in Massachusetts can be found at: <https://www.mass.gov/info-details/rape-crisis-centers>.

**B. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, a Mandated Reporter may give the Administrator Notice without identifying the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Administrator on that assessment without revealing personally identifiable information.

Anonymous Notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous Notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Administrator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

#### **18. Federal Timely Warning Obligations**

The College must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the College community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **19. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation, hearing, or Informal Resolution can be subject to discipline under applicable College policies.

#### **20. Amnesty**

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report alleged misconduct to College officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, College offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

## **A. Students**

The College also maintains an amnesty policy for students in addition to witnesses who offer help to others in need.

## **B. Employees**

Sometimes, employees are hesitant to report discrimination, harassment, retaliation, or Other Prohibited Conduct they have experienced for fear that they may get in trouble themselves. The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

## **21. Federal Statistical Reporting Obligations**

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson

Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property

Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking<sup>11</sup>

Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off- campus or in the surrounding area, but no addresses are given) must be shared with the Clery Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, local police, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

College Clery Coordinator:

### **Daniel Brent**

Vice President for Finance and Operations

Room 543

William James College

1 Wells Avenue

Newton, MA 02459

(617) 327-6777, extension 1532

dan\_brent@williamjames.edu

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<sup>11</sup> 42 U.S.C. sections 13701 through 14040.

## **22. Preservation of Evidence**

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and is particularly time sensitive. The College will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### **Sexual Assault**

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container (if provided by law enforcement).
- Seeking medical treatment can be essential even if it is not for the purpose of collecting forensic evidence.

### **Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take time-stamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Administrator, the importance of taking these actions will be discussed, if timely.

**RESOLUTION PROCESS  
FOR ALLEGED VIOLATIONS OF THE WILLIAM JAMES COLLEGE  
EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY FOR ALL FACULTY,  
STUDENTS, EMPLOYEES, AND THIRD PARTIES (the “RESOLUTION PROCESS”)**

**1. Overview**

William James College (the “College”) will act on any Notice/Formal Complaint of violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy for All Faculty, Students, Employees, and Third Parties (“the Policy”) by applying the procedures below, known collectively as the Resolution Process.

The procedures below apply to all allegations of discrimination, harassment, retaliation, and/or Other Prohibited Conduct as defined in the Policy. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which Policy provisions above are applicable. These grievance procedures apply to all Policy offenses.

**2. Collateral Misconduct**

Collateral misconduct is defined to include potential violations of other College policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under the Resolution Process. In such circumstances, the Administrator may consult with College officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Administrator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through policies and procedures applicable to students, faculty, and staff.

**3. Notice/Complaint**

Upon receipt of Notice or a Formal Complaint of an alleged Policy violation, the Administrator will initiate a prompt initial assessment to determine the College’s next steps. The Administrator will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

#### **4. Initial Assessment**

The Administrator<sup>12</sup> conducts an initial assessment, typically within seven (7) business days of receiving Notice or a Formal Complaint. The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation.
- If the conduct may not reasonably constitute a Policy violation, the matter will be evaluated consistent with the dismissal provisions in the Resolution Process. It may then be referred to another process, if applicable.
- Determining whether the College has jurisdiction over the reported conduct and the Parties, as defined in the Policy.
- If the conduct is not within College jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate College office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Determining whether the Complainant wishes to file a Formal Complaint.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, and Informal Resolution option, or the Formal Grievance Process described below.
- Notifying the Respondent of the available resolution options, including supportive and remedial response, and Informal Resolution option, or the Formal Grievance Process described below, if a Formal Complaint is made.

#### **Helping a Complainant to Understand Resolution Options**

If the Complainant indicates they wish to file a Formal Complaint, the Administrator will help to facilitate the Formal Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- A supportive and remedial response, and/or
- Informal Resolution, or
- The Formal Grievance Process described below.

The Administrator will seek to abide by the wishes of the Complainant but may have to take an alternative approach (for example, initiate the Formal Grievance Process instead of Informal Resolution) depending on their analysis of the situation.

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<sup>12</sup> If circumstances require, the College's President or Title IX Coordinator (if different from the Administrator) will designate another person to oversee the Resolution Process should an allegation be made about the Administrator or the Administrator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

If the Complainant elects for the Formal Grievance Process below, and the Administrator has determined the Policy applies (i.e., the reported conduct may reasonably constitute a Policy violation) and that the College has jurisdiction over the reported conduct and the Parties, they will route the matter to the appropriate Pool member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with the Resolution Process.

If any party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Administrator will assess whether the matter is suitable for Informal Resolution and, if the other party(ies) consent to pursuing Informal Resolution, will refer the matter accordingly.<sup>13</sup>

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, then the Resolution Process will not be initiated (unless deemed necessary by the Administrator), though the Complainant can elect to initiate one later, if desired.

### **Administrator Authority to Initiate a Complaint**

If the Complainant does not wish to file a Formal Complaint, the Administrator, who has ultimate discretion as to whether a Formal Complaint is signed, will offer supportive measures and determine whether to sign a Formal Complaint themselves. To make this determination, the Administrator will evaluate that request to determine if there is a serious and immediate threat to someone's safety or if the College cannot ensure equal access without signing a Formal Complaint. The Administrator will consider the following non-exhaustive factors to determine whether to file a Formal Complaint:

- The Complainant's request not to initiate a Formal Complaint.
- The Complainant's reasonable safety concerns regarding signing a Formal Complaint.
- The risk that additional acts of discrimination would occur if a Formal Complaint is not filed.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a College employee.
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred.

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<sup>13</sup> The College is prohibited from permitting Informal Resolution of a Formal Complaint by a student against an employee.

- Whether the College could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Administrator may consult with appropriate College employees, and/or conduct a violence risk assessment<sup>14</sup> to aid their determination whether to sign a Formal Complaint.

When the Administrator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of the Policy.

If alleged misconduct does not fall within the scope of the Policy, the Administrator determines that the Policy does not apply (and will “dismiss” that aspect of the Formal Complaint, if any), assesses which other College policies may apply, and will refer the matter accordingly. Please note that dismissing a Formal Complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit the College’s authority to address a Formal Complaint with an appropriate process and remedies.

#### **5. Dismissal (Mandatory and Discretionary)**<sup>15</sup>

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 a violation of the Policy, even if proven;
- 2) The conduct did not occur in the College’s Education Program or Activity (including buildings or property controlled by recognized student organizations) and/or the College does not have control of the Respondent;
- 3) The conduct did not occur against a person in the United States;
- 4) The Complainant is not participating in or attempting to participate in the College’s Education Program or Activity at the time of filing the Formal Complaint and, based on the available information, the Administrator has determined that they do not need to sign a Formal Complaint on behalf of the College.<sup>16</sup>

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 Administrator or Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- 2) The Respondent is no longer enrolled in or employed by the College;

<sup>14</sup> See detailed information regarding Violence Risk Assessment in [Appendix C](#).

<sup>15</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>16</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the Formal Complaint in the event the Complainant cannot/will not do so.

- 3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

Upon any dismissal, the College will promptly and simultaneously send the Parties written notice of the dismissal and the rationale for doing so.

This dismissal decision is appealable by any party. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

## **6. Appeal of Dismissal**

The Parties may appeal a decision to dismiss or not to dismiss their Formal Complaint. All dismissal appeal requests must be filed within five (5) business days of the notification of the dismissal decision.

The Administrator will notify the Parties of any appeal of the dismissal decision.

Throughout the dismissal appeal process, the College will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Formal Complaint.
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) A procedural irregularity affected the outcome of the matter.
- 2) 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.
- 3) The Administrator, 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.
- 4) The dismissal was erroneously granted or denied.

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Administrator will share the petition(s) with all other Parties and provide three (3) business days for other Parties and the Administrator to respond to the request. At the conclusion of the response period, the Administrator will forward the

appeal, as well as any response(s) provided by the other Parties and/or the Administrator to the Dismissal Appeal Officer for consideration.

If the request for appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the appeal, and the Parties, their Advisors, and the Administrator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Section 6 of the Resolution Process, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Administrator, of their decision and rationale in writing. The effect will be to reinstate or dismiss the Formal Complaint, as applicable.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Administrator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so under the permissible grounds for appeal listed above.

The Dismissal Appeal Officer may consult with the Administrator on questions of procedure or rationale for clarification, if needed. The Administrator will maintain documentation of all such consultation.

## **7. Counter-Complaints**

The College is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although the College permits the filing of counter-complaints, the Administrator will use an initial assessment, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process. At the Administrator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

## **8. Advisors in the Resolution Process**

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose.

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.

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

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available<sup>17</sup>. Parties have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

The Administrator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from the College, the College will have trained the Advisor and familiarized them with the College's Resolution Process.

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 to advise that party.

If the Parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Administrator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The College may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Administrator. The decision to grant this request is at the Administrator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the College will refuse that request at the discretion of the Administrator but may agree to copy both the party and their Advisor on all communications.

## **B. Advisor's Role in the Formal Grievance Process**

Advisors should help the Parties to prepare for each meeting or hearing and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee,

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<sup>17</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

with the exception of conducting cross-examination during a hearing, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

#### **C. Advisors in Hearings/ College-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the Parties' Advisors. The Parties are not permitted to directly question 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 questioning of the Parties and witnesses.

#### **D. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the College's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor or providing a different College-appointed Advisor. Subsequently, the Administrator will determine how to address the Advisor's non-compliance and future role.

#### **E. Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to receive copies of the draft and final investigation reports, as well as the directly related evidence file.

Advisors are expected to maintain the confidentiality of the records the College shares with them. Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The College may decline to share materials with any Advisor who has not executed the NDA. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's confidentiality expectations.

#### **F. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the confidentiality and 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 may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

#### **G. Advisor Expectations**

The College generally expects an Advisor to adjust their schedule to allow them to attend College meetings/interviews/hearings when planned, but the College may change scheduled

meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by the College. Advisors are expected to advise without disrupting proceedings.

## **9. Resolution Options Overview**

The Formal Grievance Process is the College's primary resolution approach unless all Parties and the College agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Administrator's discretion.

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.

Although 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, except for information the Parties agree not to disclose as part of an Informal Resolution. The College encourages Parties to discuss any sharing of information with their Advisors before doing so.

### **A. Informal Resolution**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Administrator at any time prior to a Final Determination, or the Administrator may offer the option to the Parties at any time. 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.

Three approaches to Informal Resolution are detailed in this section.

- 1) Supportive Resolution. When the Administrator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) Accepted Responsibility. When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and the College are agreeable to the resolution terms.
- 3) Alternative Resolution. When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Formal Grievance Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process, unless agreed to by all Parties, if Informal Resolution is unsuccessful.

If an investigation is already underway, the Administrator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the College will provide the Parties with a Notice of Investigation and Allegations, including any measures that may result from participating in such a process, information regarding any records that will be maintained or shared by the College, and any sanctions (only in the case of Accepted Responsibility).

### Informal Resolution Approaches

#### **(1) Supportive Resolution**

Most commonly offered once a Formal Complaint is filed (whereas supportive measures are offered in response to Notice). The Administrator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the College's education program and activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Administrator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Administrator does not believe there is a need to sign a Formal Complaint. At the discretion of the Administrator, this resolution option can result in an agreement between the Complainant and the College that does not require assent from any other party, as long as it does not unduly burden any other party or function punitively with respect to them.

#### **(2) Accepted Responsibility**

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Administrator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Administrator will determine whether all Parties and the College are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Administrator implements the accepted finding that the Respondent is in violation of College Policy, implements agreed-upon restrictions and remedies, and determines

the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

### **(3) Alternative Resolution**

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Administrator or other appropriate College officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Administrator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Administrator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Administrator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Administrator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Grievance Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, or Informal Resolution fails, the College will initiate or continue an investigation and subsequent Formal Grievance Process to determine whether the Policy has been violated.

**B. Formal Grievance Process** (See Sections 10 through 40, below)

**10. Notice of Investigation and Allegations (NOIA)**

The Administrator will provide the Parties written Notice of the Investigation and Allegations (the "NOIA") upon commencement of the Formal Grievance Process or Informal Resolution. 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 allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination

- The name(s) of the Investigator(s), along with a process to notify the Administrator of any conflict of interest that the Investigator(s) may have in advance of the interview process
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement of the potential sanctions/responsive actions that could result
- A statement about the College's policy on retaliation
- Information about process confidentiality
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the Parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Information about how a party may request disability accommodations or other support assistance during the Resolution Process
- A link to the College's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the Parties' College-issued email or designated accounts. Once emailed, and/or received in-person, notice will be presumptively delivered.

#### **11. Resolution Timeline**

The College will make a good faith effort to complete the Formal Grievance Process within sixty to ninety (60-90) business days, including any appeals, which the Administrator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Formal Grievance Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

#### **12. Investigator Appointment**

Once an investigation is initiated, the Administrator appoints an Investigator(s) to conduct it. These Investigators may be members of the Pool, or any other properly trained Investigator, whether internal or external to the College's community.

#### **13. Ensuring Impartiality**

Any individual materially involved in the administration of the Formal Grievance Process, including the Administrator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Administrator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Administrator will determine whether the concern is reasonable and supportable. If so, another Pool member, or other trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Administrator, concerns should be raised with the President of the College.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

#### **14. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

#### **15. Investigation Process Delays and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The College will promptly resume its Resolution Process as soon as feasible. During such a delay, the College will implement and maintain supportive measures for the Parties as deemed appropriate. If a party seeks a short delay in the investigation, such request should be submitted to the Administrator in writing, to the extent practicable, explaining the grounds for the requested delay and the anticipated duration. The Administrator will review such request and render a decision within 2 business days, subject to the Administrator's right to require the requesting party to provide additional information or supporting documentation for the grounds asserted.

College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

The College will make a good faith effort to complete the Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

## **16. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the Investigator's recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The College may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all Policy violations implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
- Assist the Administrator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential Policy violation.
- Work with the Administrator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which

questions were asked with a rationale for any changes or omissions in the Investigation Report.

- When possible, promptly complete the investigation without unreasonable deviation from the intended timeline.
- Provide the Parties regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Write a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an 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 Parties may elect to waive the full ten (10) days.
- Incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report.
- Respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator will then share the Final Investigation Report with the Administrator for their review and feedback.
- The Investigator will then provide the Administrator with the Final Investigation Report and investigation file.

#### **17. Witness Role and Participation in the Investigation**

Non-party witnesses who are College employees are expected to cooperate with and participate in the College's investigation and Formal Grievance Process. Student witnesses and witnesses from outside the College community are encouraged to cooperate with College investigations and to share what they know about a Formal Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The College will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and 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 this is not preferred.

## **18. Interview Recording**

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the method of recording prior to the commencement of the interview. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

## **19. Evidentiary Considerations**

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant or directly related.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a Policy violation.

Neither the investigation nor the hearing will consider:

- 1) Questions or evidence about the Complainant's sexual predisposition.
- 2) Questions or evidence about the Complainant's 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 alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- 3) Questions or evidence about a party or witness's records that are made or maintained by a physician, psychologist, or other recognized profession or paraprofessional in connection with the provision of treatment to the party or witness, unless the party or witness provides voluntary, written consent for the records to be considered.

Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **20. Referral for Hearing**

Provided that the Formal Complaint is not resolved through Informal Resolution, once the Final Investigation Report is shared with the Parties, the Administrator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation (i.e., 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 Administrator will select an appropriate Decision-maker from the Pool and provide a copy of the Final Investigation Report and the file of directly related evidence.

## **21. Hearing Decision-maker Composition**

The Decision-maker will not have had any previous involvement with the Formal Complaint or Formal Grievance Process. The Administrator may elect to have an alternate Decision-maker from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

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

The Title IX Coordinator may not serve as a Decision-maker 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 the hearing facilitator role. The hearing will convene at a time and venue determined by the Administrator or designee.

## **22. Additional Evidentiary Considerations in the Hearing**

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Each party may submit an impact and/or mitigation statement to the Administrator that the Decision-maker will review during any sanction determination.

Upon receipt of an impact and/or mitigation statement, the Administrator will review the impact/mitigation statement to determine whether any immediate needs exist.

The Administrator will only provide the impact statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Administrator shares the impact statements with the Decision-maker, they will also be shared with the Parties.

### **23. Hearing Notice**

The Administrator will send the Parties a Notice of Hearing no less than ten (10) business days prior to the hearing.<sup>18</sup> Once emailed, and/or received in-person, notice will be presumptively delivered. The notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the identities of the Parties and witnesses participating in the hearing, the identity of the Decision-maker, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker based on demonstrated bias or conflict of interest. Such objection must be raised with the Administrator at least three (3) business days prior to the hearing.
- Information on how the hearing will be recorded and how the Parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-maker may reschedule the hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Administrator if they wish to conduct cross-examination and do not have an Advisor, and the College will appoint an Advisor for this limited purpose of cross-examination during the hearing. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-maker about the Formal Complaint unless they have already been provided to the Parties.<sup>19</sup>
- An invitation to each party to submit an impact and/or mitigation statement to the Decision-maker pre-hearing for review prior to any sanction determination.
- An invitation to contact the Administrator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

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<sup>18</sup> Unless an expedited hearing is agreed to by all parties.

<sup>19</sup> The Final Investigation Report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- Whether Parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the College's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Resolution Processes that occur during months between contracts.

#### **24. Hearing Venue Options and Recording**

The hearing may occur in person or via video technology. The Decision-maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Administrator's discretion.

- The Parties may make a request to the Administrator that the hearing be held in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Administrator retains discretion to determine whether the hearing will occur in person or via video technology.
- All hearings will be recorded (audio only), and Parties may request a copy of the recording from the Administrator following the live hearing.
- No unauthorized recordings are permitted.

#### **25. Pre-Hearing Preparation**

After any necessary consultation with the Parties, the Decision-maker will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the Final Investigation Report to the Parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement to or answered written questions from the Investigator, unless all Parties and the Decision-maker assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the Parties and Decision-maker do not assent to the admission of evidence newly offered at the hearing, the Decision-maker may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>20</sup>

The Parties will be given the Decision-maker(s) name(s) at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Administrator as soon as possible

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<sup>20</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

and no later than three (3) business days prior to the hearing. Decision-makers will only be removed if the Administrator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the allegations.

The Administrator will give the Decision-maker a list of the names of all Parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Administrator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the Parties have the opportunity for continued review and comment on the Final Investigation Report and available evidence. That review and comment can be shared with the Decision-maker at a pre-hearing meeting or at the hearing, and any submitted review and comment will be exchanged between each party by the Decision-maker.

## **26. Pre-Hearing Meetings**

The Decision-maker will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-maker will work with the Parties to finalize a witness list for the hearing, and the Administrator will notify any witnesses of the hearing's logistics. The Decision-maker, only with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Decision-maker will work with the Parties to establish

the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

**27. Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, retaliation, and/or Other Prohibited Conduct and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, retaliation, and/or Other Prohibited Conduct, even though those collateral allegations may not specifically fall within the Policy.

The Decision-maker will answer all questions of hearing procedure.

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

**28. Joint Hearings**

In Formal Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same Respondent of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Administrator may permit the investigation and/or hearings pertinent to each Respondent or Formal Complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each Formal Complaint with respect to each alleged Policy violation.

**29. Introductions and Hearing Procedure Explanation**

The Decision-maker will explain the hearing procedures and introduce the participants. The Decision-maker will answer any procedural questions prior to and as they arise throughout the hearing.

**30. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties through their Advisors. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

**31. Testimony and Questioning**

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement and response to questions, followed by the Respondent's

opening statement and response to questions. Witnesses will respond to questions in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through their Advisors.

All questions are subject to the Decision-maker's relevance determination. The Advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted). The proceeding will pause to allow the Decision-maker to consider the question (and state it if it has not already been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive, and they have final say on all questions and relevance determinations. The Decision-maker may consult with legal counsel on any questions of admissibility.

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

### **32. Refusal to Submit to Questioning; Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely upon the available, relevant evidence in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer any or all questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

### **33. Hearing Recordings**

The College records the audio of the hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate College officials will be permitted to review the recording or review a transcript of the recording upon request to the Administrator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

### **34. Deliberation, Decision-making, and Standard of Evidence**

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the Policy violation(s) in question. The determination is made by applying the preponderance of the evidence. The Decision-maker may invite the hearing facilitator to attend the deliberation, but the facilitator does not address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Administrator will ensure that each of the Parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker will also review any pertinent conduct history provided by the Dean of Students, Academic and Non-Academic Department Chairs, and/or Human Resources Office and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-maker will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Administrator.

This statement must be submitted to the Administrator within three (3) business days of the end of deliberations unless the Administrator grants an extension. If an extension is granted, the Administrator will notify the Parties.

### **35. Notice of Outcome**

Using the deliberation statement, the Administrator will work with the Decision-maker to prepare a Notice of Outcome letter. The Administrator will then share the letter, which includes the Final Determination, rationale, and any applicable sanction(s), with the Parties and their Advisors within 7 business days of receiving the 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 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 articulate the specific alleged Policy violation(s), including the relevant Policy section(s), 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 specify the finding for each alleged Policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant Policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under federal or state law; any sanction(s) issued which the College is permitted to share according to federal or state law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity.

The Notice of Outcome will also include information on when the College considers the final, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

**36. Rights of the Parties** (See Appendix A)

**37. Sanctions**

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- 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
- The Respondent's acknowledgement of responsibility
- Any other information deemed relevant by the Decision-maker(s)

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

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

**A. Student Sanctions**<sup>21</sup>

The following are the common sanctions that may be imposed upon students singly or in combination:

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<sup>21</sup> College policies on transcript notation apply to these sanctions.

- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Training*: A mandate to attend either College-sponsored or external training or education to better comprehend the misconduct and its effects.
- *Recommended Counseling*: A recommendation to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, or holding leadership roles in student organizations.
- *Probation*: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Dismissal*: Separation from the institution, consistent with the College's applicable dismissal policies. This action may be enforced with a trespass action, as necessary.
- *Commencement Participation*: The College may deny a student participation in commencement activities as a sanction if the student is found responsible for violating Policy.
- *Revocation of Degree*: While very rarely exercised, the College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to, or in place of, the above sanctions, the College may assign any other sanctions as deemed appropriate.

## **B. Student Organization Sanctions<sup>22</sup>**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.

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<sup>22</sup> For clarity, organizations cannot be charged as Respondents under Title IX. However, nothing prevents the College from holding a student organization accountable for Policy violations using the Resolution Process described herein, as long as it was clearly noted that Title IX was not applicable. Individuals will be investigated for their role in organizational misconduct under Title IX, and the relevant organization would be investigated for collateral misconduct to the individual Respondent's alleged actions, resolved in the same process as those individual investigations.

- *Probation*: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of College funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in College-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.
- *Expulsion*: Permanent termination of student group or organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific College privileges for a specified period of time.
- *Other Actions*: In addition to, or in place of, the above sanctions, the College may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who is found to have engaged in discrimination, harassment, retaliation, and/or Other Prohibited Conduct include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*

- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to, or in place of, the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

### **38. Withdrawal or Resignation Before Complaint Resolution**

#### **A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation in a reasonable resolution. If a student Respondent withdraws from the College during the pendency of the Resolution Process, the ongoing process typically ends with a dismissal, as the College has lost primary disciplinary jurisdiction over the withdrawn student. However, the College may continue the Resolution Process when, at the discretion of the Administrator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the applicable Resolution Process, the College will still provide reasonable supportive or remedial measures to the Complainant and continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a student withdraws or leaves while the Resolution Process is pending, the student may not return to the College in any capacity until the Formal Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Administrator has discretion to dismiss the Formal Complaint. The Registrar and Office of Admissions may be notified, accordingly.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to the College unless and until all sanctions, if any, have been satisfied.

#### **B. Employees**

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with the College with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the former employee. However, the College may continue the Resolution Process when, at the discretion of the Administrator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Resolution Process, the College will still provide reasonable supportive or remedial measures to the Complainant and continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Formal Complaint is dismissed, the employee may not return to the College in any capacity. The Human Resources Office will be notified, accordingly. A note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the College. The records retained by the Administrator will reflect that status.

### **39. Appeal of the Determination**

The Administrator will designate an Appeal Decision-maker – either a three-member panel or an individual chosen from the Pool, or other trained internal or external individuals, to hear the appeal. The Appeal Decision-maker will not have been previously involved in the Resolution Process for the Formal Complaint. If a panel is used, a voting chair will be designated by the Administrator.

#### **A. Appeal Grounds**

Appeals are limited to the following grounds (the "Grounds for Appeal"):

- 1) A procedural irregularity affected the outcome of the matter.
- 2) There is new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter.
- 3) The Administrator, 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.
- 4) The Decision-maker's Final Determination is substantially contrary to the weight of the evidence in the record (applicable to sanctions of suspension, expulsion, or termination, only).
- 5) The sanctions fall outside the range of sanctions designated for this offense, considering the cumulative conduct/disciplinary record of the Respondent (applicable to sanctions of suspension, expulsion, or termination, only).

#### **B. Request for Appeal**

Any party may submit a written request for appeal ("Request for Appeal") to the Administrator within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the Grounds for Appeal (a "Review for Standing"). This is not a

review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the Grounds for Appeal and is timely filed.

If the Appeal Decision-maker determines that the Request for Appeal does not provide information that meets the Grounds for Appeal in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the Appeal Decision-maker's rationale.

If the Appeal Decision-maker determines that the Request for Appeal does (in whole or in part) provide information that meets the Grounds for Appeal, the respondent Party(ies) and their Advisor(s), the Administrator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal 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 for consideration and involves them. The Appeal Decision-maker will forward all responses to the Request for Appeal to the appellant, the Administrator, and the Investigator(s) and/or Decision-maker, as applicable, for review and comment.

The responding party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the Grounds for Appeal and will either be approved (in whole or in part) or denied. If approved, it will be forwarded to the appellant, the Administrator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment among all Parties, the Administrator, and the Investigator(s) and Decision-maker, as applicable. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved Grounds for Appeal, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

### **C. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific Grounds for Appeal. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote (if the Appeal Decision-maker consists of a three-member panel) and application of the preponderance of the evidence standard of evidence.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Administrator on questions of procedure or rationale, for clarification, if needed. The Administrator will maintain documentation of all such consultation.

#### **D. Appeal Outcome**

An appeal may be granted or denied (in whole or in part). Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Administrator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each Ground for Appeal, any specific instructions for remand or reconsideration, all sanction(s) that may result which the College is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the College is permitted to share under federal or state law.

Written notification of the Appeal Outcome may be delivered by one or more of the following methods: in person or emailed to the Parties’ College-issued email or otherwise approved account. Once emailed and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the Grounds for Appeal listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available Grounds for Appeal.

#### **E. Sanction Status During the Appeal**

Any sanctions imposed as a result of the Final Determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

#### **40. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented as a result of the Formal Grievance Process or Informal Resolution terms, the Administrator may implement additional long-term remedies or actions with respect to the Parties and/or the College community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Administrator, 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 Administrator will address any remedies the College owes the Respondent to ensure no effective denial of educational access.

The College will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the College's ability to provide these services.

#### **41. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the terms of Informal Resolution.

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.

Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Administrator's satisfaction.

#### **42. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, the College will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- 2) Any disciplinary sanctions imposed on the Respondent.
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the College's education program or activity.
- 4) Any appeal and the result therefrom.
- 5) Any Informal Resolution and the result therefrom.
- 6) All materials used to train the Administrator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the College's Resolution Process. The College will make these training materials publicly available on the College's website.
- 7) Any other actions taken in response to a report or Formal Complaint including:
  - a) The basis for all conclusions that the response was not deliberately indifferent, and
  - b) Any measures designed to restore or preserve equal access to the College's education program or activity.

The College will also maintain any and all records in accordance with federal and state laws.

See also Exhibit E (Record Maintenance and Access Policy)

#### **43. Accommodations and Support During the Resolution Process**

##### **Disability Accommodations**

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 Administrator, who will work with the College's Accessibility Services and other College personnel as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

## Other Support

The College will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

#### **44. Revision of this Policy and Procedures**

This Policy and Resolution Process supersede any previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020. The Administrator will regularly review and update the Policy and procedures. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing 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 laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the underlying federal and state laws on which the policies, processes, and rules described herein are founded.

A change required by a court decision could occur while an active matter is pending in the Resolution Process. If that happens, the College will adjust its Policy and Resolution Process accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy and Resolution Process, which could necessitate restarting an investigation or Resolution Process. The College will make every effort to prevent such disruptions to minimize the impact on the Parties as much as possible if changes are unavoidable.

This Policy and procedures are effective as of March 6, 2025.

## **APPENDIX A: STATEMENT OF THE PARTIES' RIGHTS**

### **Under this Policy and procedures, the Parties have the right to:**

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Conduct, when reported in good faith to College officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any College public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the College's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by College officials.
- Have College Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without College pressure, if Informal Resolution is approved by the Administrator.
- Not be discouraged by College officials from reporting discrimination, harassment, retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- Have College officials respond promptly to alleged Policy violations.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on campus and in the community.
- A College-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic and/or employment situations after an alleged incident of discrimination, harassment, retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
- Visa/immigration assistance
- Rescheduling or adjusting an exam, paper, and/or assignment
- Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
- Transferring class sections
- Temporary withdrawal/leave of absence (may be retroactive)
- Alternative course completion options
- Have the College maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures or comply with the law.
- Receive sufficiently advanced written notice of any College meetings or interviews involving another party, when possible.
- Identify and have the Investigator(s), Advisors, and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual predisposition/prior sexual history or any party's irrelevant character evidence excluded by the Decision-maker
- Review the relevant and directly related evidence obtained and to respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10)-business-day period to review and comment on the evidence.
- Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Formal Grievance Process.
- Have reports of alleged Policy violations addressed by Pool members, or others, who have received relevant annual training as required by law.
- A Decision-making panel that is not single sex in its composition, if a panel is used.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of evidence, preponderance of the evidence to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Formal Grievance Process finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a College decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s) and the procedures for doing so in accordance with the College's appeal grounds.
- A fundamentally fair resolution as defined in the Resolution Process.

## **APPENDIX B: PRIVACY AND CONFIDENTIALITY**

For the purpose of this Policy, privacy and confidentiality have distinct meanings.

**Privacy** means that information related to a Formal Complaint will be shared with a limited number of College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the Formal Complaint. All employees who are involved in the College’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the College’s student records policies. The privacy of employee records will be protected in accordance with Human Resources policies.

**Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see the Policy, Section 17.

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

## **APPENDIX C: VIOLENCE RISK ASSESSMENT**

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment** (“VRA”) is a broader term used to describe assessment of any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other qualified behavioral professionals (the “VRA Professionals”).

A VRA occurs in collaboration with the VRA Professionals and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

- 1) An appraisal of risk factors that escalate the potential for violence.
- 2) A determination of stabilizing influences, or protective factors, that reduce the risk of violence.
- 3) A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on the target; grievance collection; and action and time imperative for violence.

The application of intervention and management approaches to reduce the risk of violence.

To assess an individual’s level of violence risk, the Administrator will initiate the VRA process, utilizing VRA Professionals. The trained VRA Professional(s) will be assigned to perform the assessment, according to the specific nature of the allegations.

The assessor(s) will rely on a consistent, research-based, reliable VRA process that allows for the evaluation of risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,<sup>23</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>24</sup> Violence Risk Assessment

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<sup>23</sup> <https://www.nabita.org/training/nabita-risk-rubric/>

<sup>24</sup> <https://www.nabita.org/training/sivra-35/>

of the Written Word (VRAWW),<sup>25</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>26</sup> Historical Clinical Risk Management (HCR-20),<sup>27</sup> and MOSAIC.<sup>28</sup>

The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The assigned VRA Professional(s) conducts a VRA process and makes a recommendation to the Administrator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

In some circumstances, the Administrator may determine that a VRA should be conducted by a VRA Professional as part of the initial assessment of a Formal Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

- Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)
- Whether the Administrator should pursue/sign a Formal Complaint absent a willing/able Complainant
- Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment
- To help identify potential predatory conduct
- To help assess/identify grooming behaviors
- Whether it is reasonable to try to resolve a Formal Complaint through Informal Resolution, and if so, what approach may be most successful
- Whether to impose transcript notation or communicate with a transfer institution about a Respondent, as applicable
- Assessment of appropriate sanctions/remedies (to be applied post-determination)
- Whether a Clery Act Timely Warning/Trespass order/Persona Non Grata is needed

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

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<sup>25</sup> <https://www.nabita.org/training/vraww/>

<sup>26</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>27</sup> <http://hcr-20.com>

<sup>28</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

## **APPENDIX D: POOL MEMBER TRAINING**

Pool members receive annual training related to their respective roles. This training may include, but is not limited to:

- The scope of the College's Policy
- The College's Formal Grievance Process
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Disparate treatment
- Disparate impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of discrimination, harassment, retaliation, and/or Other Prohibited Conduct violations
- Recordkeeping

The materials used to train all members of the Pool do not rely on sex stereotypes and are publicly posted at <https://www.williamjames.edu/about/human-resources/Title-IX-Policy.html>, under the Training tab.

## **APPENDIX E: RECORD MAINTENANCE AND ACCESS POLICY**

### **Policy Scope**

This policy covers records maintained in any medium that are created pursuant to the College's Equal Opportunity, Harassment, and Nondiscrimination Policy for All Faculty, Students, Employees, and Third Parties (the "Policy"), including its related Resolution Process. All such records are considered private or confidential in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to discrimination, harassment, and retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the Parties to a Formal Complaint under applicable federal and/or state law. The Administrator controls the dissemination and sharing of any records created pursuant to the Policy.

### **Types of Records Covered Under this Policy**

**Records Pertaining to the Policy include, but are not limited to:**

- The Formal Complaint
- NOIAs
- Documentation of Notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known Parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation and appeals
- Documentation related to Emergency Removals, leaves, and interim actions and challenges
- Documentation related to the Resolution Process
- The Final Investigation Report and Directly Related Evidence file
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal Resolution records
- Outcome Notices
- Records documenting that the College's response was not deliberately indifferent
- Any other records typically maintained by the College as part of the complaint file

**Drafts and Working Files:** Preliminary drafts and "working files" are not considered records that the College must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author

and/or the Administrator. An example of a “working file” would be the Investigator’s notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category of drafts and working files. However, all drafts of investigation reports shared with the Parties are maintained according to this records policy.

**Attorney Work-Product:** Communications from the Administrator or its designees with the College’s legal counsel may be privileged communications and/or work product. These communications are not considered records to be maintained by the Administrator or accessible under this policy unless the Administrator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

### **Record Storage**

Records may be created and maintained in different media formats; this Policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in digital format and maintained by the Administrator. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained during the pendency of an investigation.

The Administrator will store all covered records created pursuant to the Policy, regardless of the identities of the Parties. Any extra (i.e., non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act/Violence Against Women Act (VAWA) requirements, as applicable, will be maintained along with the complaint file.

### **Title IX Training Materials**

The College also maintains copies of the materials from all Title IX training for the Formal Grievance Process Pool members, the Nondiscrimination Team, and employees. Copies of the most recent training materials used are posted online at <https://www.williamjames.edu/about/human-resources/Title-IX-Policy.html>, under the Training tab.

### **Record Retention**

All records created and maintained pursuant to the Policy will be retained by the Administrator for a period of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the Administrator may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

## **Record Access**

Access to records created pursuant to the Policy is strictly limited to the Administrator and any person they authorize in writing, at their discretion, or via permission levels within the database. Those who are granted broad access to these records are expected to access only those records pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant College policies and procedures.

Student Parties may request access to their complaint file. The College will provide access or a copy within 45 calendar days of the request. Appropriate redactions of personally identifiable information may be made before inspection is permitted, or any copy is shared.

During the investigation, materials may be shared with the Parties, their Advisors, the Investigator, or other members of the Formal Grievance Process Pool and/or Nondiscrimination Team (if such member has a recognized role in the relevant investigation, such as a Hearing Decision-maker) using secure file transmission software. The Administrator will watermark or otherwise label any such file with identifying the role of the recipient in the process (e.g., Complainant, Respondent, Hearing Decision-maker; Complainant's Advisor) before sharing the materials.

The College will maintain an access log of each case file, showing when and by whom it was accessed and for what purpose.

## **Record Security**

The Administrator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from floods, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored with the Administrator or another appropriate secure location to be designated by the Administrator. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the complaint file.