

# VIII – 20.0 Sexual Harassment & Title IX SAVE Act Policy

## Appendix 1

### **A. Reporting Incidents of Sexual Harassment**

1. Members of the campus community who believe they have been victims of crimes may report the incident to campus or local police. All emergencies or any incident where someone is in imminent danger should be reported immediately to campus police/security or local police by dialing 911 or campus police at 434.961.5319.
2. Whether or not a report is made to law enforcement, any person may report incidents of sexual harassment, domestic violence, dating violence, sexual assault, or stalking (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute a violation of this Policy), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or Deputy Coordinator, or by reporting such conduct to a Responsible Employee to ensure that the Title IX Coordinator receives the verbal or written report.
- 3.
4. The Title IX Coordinator is Kim Van Savage, 434-961-5245, [kvansavage@pvcc.edu](mailto:kvansavage@pvcc.edu). The Deputy Coordinator is David Lerman, 434-961-5430, [dlerman@pvcc.edu](mailto:dlerman@pvcc.edu). The Coordinator/Deputy Coordinator is solely responsible for overseeing the prompt, fair, and impartial investigation and resolution of reports and formal complaints filed with the College. Additional contacts and an online reporting system link can be found on the PVCC Safe site: <https://www.pvcc.edu/pvcc-safe>.
5. During non-business hours, campus community members should report alleged violations of this Policy through the online reporting system on the PVCC Safe site: <https://www.pvcc.edu/pvcc-safe> or to the campus police at 434.961.5319.
6. There is no time limit for reporting incidents of sexual harassment with the Title IX Coordinator. However, complainants should report possible violations of this Policy as soon as possible to maximize the College's ability to respond effectively to the report. Failure to report promptly also could result in the loss of relevant evidence.

### **B. Procedures to Follow after an Incident**

Anyone who has experienced a sex offense, domestic violence, dating violence, sexual

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assault, or stalking should take the following action:

1. Find a safe place away from harm.
2. Call 911 or if on campus, contact campus police/security. The Title IX Coordinator may assist you in notifying law enforcement authorities if you wish, and you may decline to notify law enforcement.
3. Call a friend, a campus advocate, a family member, or someone else you trust and ask her or him to stay with you.
4. Go to the nearest medical facility/emergency room. It is important to seek appropriate medical attention to ensure your health and well-being, as well as to preserve any physical evidence.
5. If you suspect that you may have been given a drug, ask the hospital or clinic where you receive medical care to take a urine sample. The urine sample should be preserved as evidence. "Rape drugs," such as Rohypnol and GHB, are more likely to be detected in urine than in blood.
6. For professional and confidential counseling support, call the Virginia Family Violence & Sexual Assault Hotline at 1-800-838-8238. Help is available 24 hours a day.
7. You should take the following steps to preserve any physical evidence because it will be necessary to prove criminal domestic violence, dating violence, sexual assault, or stalking, or to obtain a protective order:
  - a) Do not wash your hands, bathe, or douche. Do not urinate, if possible.
  - b) Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if the incident involved oral contact.
  - c) Keep the clothing worn when the incident occurred. If you change clothing, place the worn clothing in a paper bag.
  - d) Do not destroy any physical evidence that may be found in the vicinity of the incident by cleaning or straightening the location of the crime. Do not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.
  - e) Tell someone all the details you remember or write them down as soon as possible.
  - f) Maintain text messages, pictures, online postings, video, and other documentary or electronic evidence that may corroborate a formal complaint.

8. The College will enforce protective orders issued by a court of law to the extent possible.

### **C. Support Services**

1. All students and employees will receive information in writing about available counseling, health, mental health, victim advocacy, legal assistance, and other services available in the community and on campus.
2. For information about available resources, go to: <https://www.pvcc.edu/pvcc-safe>.

### **D. Handling Reports of Sexual Violence**

1. Reports to Law Enforcement. The Title IX Coordinator will assist members of the campus community in reporting incidents of sexual violence as defined by this Policy to law enforcement authorities upon request. When allowable under Virginia law, the Title IX Coordinator will request the consent of the complainant (or alleged victim if different from the complainant) to report incidents of alleged sexual violence that occur on campus property to law enforcement.
2. Meeting(s) of the Review Committee. Within 72 hours of receiving a report of an alleged act of sexual violence as defined in this Policy against a student or one that allegedly occurred on property owned or controlled by the College or on public property within the campus, or immediately adjacent to and accessible from the campus, the Title IX Coordinator shall convene the College's Review Committee to review the information reported and any information obtained through law enforcement records, criminal history record information, health records, conduct or personnel records, and any other facts and circumstances, including personally identifiable information, related to the alleged incident known to the Review Committee.
3. Disclosures to Law Enforcement. Under Virginia law, the Review Committee may determine that the disclosure of information to local law enforcement regarding the alleged incident of sexual violence, including personally identifiable information, is necessary to protect the health or safety of the complainant or other individuals.
  - a) The Review Committee may try to reach a consensus, but it is the law enforcement representative of the Review Committee that ultimately determines whether the disclosure of the information, including the personally identifiable information, is necessary to protect the health or safety of the alleged victim or other individuals. The College shall disclose such information to the law enforcement agency that would be responsible for investigating the alleged incident immediately.

- b) The Title IX Coordinator will notify the alleged victim in writing that the College will disclose such information to law enforcement.
4. Disclosures to the Commonwealth's Attorney. If the report of an alleged act of sexual violence would constitute a felony, within 24 hours of the first Review Committee meeting, the law enforcement representative of the Review Committee shall notify the local Commonwealth's Attorney (or other prosecutor responsible for prosecuting the alleged act of sexual violence) and disclose the information received by the Review Committee, including personally identifiable information, if such information was disclosed pursuant to Section S3.
- a) The law enforcement representative usually will make this disclosure; however, any member of the Review Committee may decide independently that such disclosure is required under state law and within 24 hours of the first Review Committee meeting shall disclose the information to the local Commonwealth's Attorney (or other prosecutor responsible for prosecuting the alleged act of sexual violence), including personally identifiable information, if such information was disclosed pursuant to Section S3.
  - b) If the Title IX Coordinator is aware of such disclosure, the Title IX Coordinator will notify the alleged victim in writing that such disclosure is being made.
5. Law enforcement will notify the local Commonwealth's Attorney within 48 hours of beginning an investigation involving a felonious act of sexual violence. Either campus police, the local law enforcement agency, or the State Police will notify the Commonwealth's Attorney pursuant to an MAA/MOU.
6. The College also must inform the complainant of the following:
- a) the available law enforcement options for investigation and prosecution;
  - b) the importance of collection and preservation of evidence;
  - c) the available options for a protective order;
  - d) the available campus options for investigation and adjudication under the institution's policies;
  - e) the complainant's rights to participate or decline to participate in any investigation to the extent permitted under state or federal law;
  - f) the applicable federal or state confidentiality provisions that govern information provided by a victim;
  - g) the available on-campus resources and any unaffiliated community resources, including sexual assault crisis centers, domestic violence crisis centers, or other victim support services;
  - h) the importance of seeking appropriate medical attention; and

- i) the College's obligation to disclose information about the report, including personally identifiable information, to campus or local law enforcement, or to the local Commonwealth's Attorney, or both, if the review team determines that such disclosure is necessary to protect the health or safety of the complainant or others.
7. In addition to the procedures described in this Section, the College shall follow the procedures described in Section T.

***E. Handling Reports of Sexual Harassment, including Domestic Violence, Dating Violence, Sexual Assault, or Stalking***

1. Upon receiving actual knowledge of sexual harassment in an education program or activity of the College against a person in the United States, the College must respond promptly in a manner that is not deliberately indifferent. The College will treat complainants and respondents equitably by offering supportive measures to the complainant and by completing either a formal or informal resolution process before imposing any disciplinary sanctions or other corrective actions that are not supportive measures against a respondent.
2. Upon receiving a report of sexual harassment (including domestic or dating violence, sexual assault, or stalking), the Title IX Coordinator shall take the following actions:
  - a) promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes with respect to such supportive measures;
  - b) inform the complainant that supportive measures are available with or without the filing of a formal complaint;
  - c) explain to the complainant the process for filing a formal complaint, including providing the complainant with a Formal Complaint Form, when applicable; and,
  - d) give the complainant a written explanation of available rights and options as described in Sections H, L, M, N, U, and AA.
3. The Title IX Coordinator shall take the actions described above whether the offense occurred on or off campus.
4. Closing the Report. After following the procedures described in this Section, the Title IX Coordinator must close the report if:
  - a) the conduct alleged in the report would not constitute sexual harassment as defined by this Policy, even if proved;
  - b) the conduct did not involve an education program or activity of the College; or

- c) the complainant does not file a formal complaint, and the Title IX Coordinator does not sign a formal complaint.
  - (1) The Title IX Coordinator shall forward the report to the appropriate College official that will determine whether the conduct alleged in the report violates a separate policy or code of conduct and provide written notice of the decision to close the report to the complainant.
  - (2) The Title IX Coordinator will document the action(s) taken and the rationale for such action(s).
  - (3) The decision to close the report is final.

## ***F. Resolution of Formal Complaints***

1. The College's Responsibilities. The College must provide a prompt, fair, and impartial investigation, and resolution of alleged violations of this Policy. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties, but the parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
  - a) When resolving a formal complaint, the College will evaluate all relevant evidence objectively, including both inculpatory and exculpatory evidence, and will make credibility determinations without reference to a person's status as a complainant, respondent, or witness.
  - b) The College will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
  - c) All employees involved in the resolution of formal complaints, including the appeal process, must not have a conflict of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent.
  - d) All employees involved in the resolution of formal complaints receive relevant training.
  - e) The College will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the formal or informal resolution process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

- f) At all times prior to a determination of responsibility, the respondent will be presumed not responsible for the alleged conduct. The imposition of interim measures does not constitute a presumption of responsibility.
2. Resolution Process Options. The College may resolve formal complaints by either a formal or informal resolution process.
  3. Consolidation of Formal Complaints. The College may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
  4. Suspending an Investigation. The College will comply with all requests for cooperation by the campus police or local law enforcement in investigations. The College may be required to suspend the Title IX investigation while the campus police or the local law enforcement agency gathers evidence. The College will resume its Title IX investigation as soon as the campus police or local law enforcement agency has completed its gathering of evidence. Otherwise, the College's investigation will not be precluded or suspended on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.
  5. Preliminary Investigation. If the respondent's identity is unknown, the Title IX Coordinator (or campus police) will conduct a preliminary investigation to determine the respondent's identity. If the preliminary investigation fails to reveal the identity of the respondent, the Title IX Coordinator shall dismiss the formal complaint because the College must have sufficient information to conduct a meaningful and fair investigation. If the identity of the respondent is revealed, the Title IX Coordinator shall proceed as otherwise provided in this Policy. The Title IX Coordinator will notify the complainant in writing of the result of the preliminary investigation promptly after the preliminary investigation.
  6. Time Frame for Resolution of Formal Complaint.
    - a) The formal resolution of any formal complaint should be completed normally within seventy-five (75) workdays of filing the formal complaint, unless good cause exists to extend the timeframe. For resolving formal complaints, good cause includes but is not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or unavoidable scheduling conflicts. The 75-workday timeframe refers to the entire formal resolution process, which includes the initial determination, investigation, live hearing, determination of responsibility, and the imposition of sanctions and provision of remedies, if any. The 75-workday timeframe does not include appeals. If any step of the process must be suspended or delayed for any

reason and more time is necessary, the Title IX Coordinator will notify the parties in writing and give the reason for the delay and an estimated length of the delay.

- b) The informal resolution of any formal complaint should be completed within thirty (30) workdays of filing the formal complaint. Timeframes governing the formal resolution process temporarily cease, and only recommence upon reentry into the formal resolution process.

## **G. Formal Resolution Process**

1. Formal Complaint Form. To initiate the formal resolution process, complainants must complete the Formal Complaint Form or other written and signed document that requests an investigation, [found in Appendix A or other location], and submit it to the Title IX Coordinator. After due consideration of the complainant's wishes, the Title IX Coordinator may sign a formal complaint. In determining whether to sign a formal complaint, the Title IX Coordinator will consider the following factors:
  - a) The seriousness of the allegation(s), including whether the allegation(s) include bodily injury, threats, or the use of weapons;
  - b) The complainant's or alleged victim's age;
  - c) Whether there have been other similar complaints of against the same respondent; and,
  - d) The applicability of any laws mandating disclosure.
2. Notice of Allegations to the Parties. After receiving a formal complaint and as soon as practicable, the Title IX Coordinator will contact the parties to schedule an initial meeting. The correspondence must include the following information:
  - a) A copy of the College's Title IX Policy against sexual harassment, including the process by which the College resolves allegations of sexual harassment;
  - b) Notice of the allegation(s), including sufficient details known at the time and with sufficient time to prepare a response before the initial meeting. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
  - c) Notice that each party may be accompanied by an advisor of his or her choice at all meetings and the live hearing who may be, but is not required to be, an attorney, and that each party and advisor will have the opportunity to inspect and review evidence;

- d) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal or informal resolution process;
  - e) A statement that each party must notify the Title IX Coordinator in writing within five (5) workdays if he or she believes that the Title IX Coordinator has a conflict of interest or bias against the party; and
  - f) A statement that the College prohibits knowingly making false statements or knowingly submitting false information during the resolution of a formal complaint, in accordance with Section Q of this Policy.
3. Complainant's Initial Meeting with the Title IX Coordinator. At this meeting, the Title IX Coordinator will:
- a) Determine whether an informal resolution is permissible, and whether the complainant wishes to pursue a resolution (formal or informal) through the College or no resolution of any kind;
  - b) Explain avenues for formal resolution and informal resolution of the formal complaint;
  - c) Explain that if the complainant chooses an informal resolution, that the complainant may withdraw from the informal resolution process at any time prior to the conclusion of the informal resolution process and pursue a formal resolution process, but may not do so after the conclusion of the informal resolution process;
  - d) Explain that records related to the informal resolution process will be maintained for a period of seven years and be made part of the record if a formal resolution process is pursued;
  - e) Explain the investigative process, including the right to discuss the allegations under investigation and to present fact and expert witnesses and other relevant evidence;
  - f) Discuss confidentiality standards and concerns with the complainant;
  - g) Discuss non-retaliation requirements;
  - h) Refer the complainant to campus and community resources, including the local sexual assault crisis center, domestic violence crisis center, victim support service with which the College has entered into a memorandum of understanding, or other appropriate support services;
  - i) Inform the complainant of any interim measures that will be imposed and any supportive measures that will be provided to the complainant during the pendency of the investigative and resolution processes;

- j) Discuss the right to a prompt, fair, and impartial resolution of the formal complaint; and,
  - k) Answer questions about the Policy and procedures.
4. Respondent's Initial Meeting with the Title IX Coordinator. During this meeting with the respondent, the Title IX Coordinator will:
- a) Review the allegations;
  - b) Determine whether an informal resolution is permissible, and whether the respondent wishes to pursue an informal resolution;
  - c) Explain avenues for formal resolution and informal resolution of the formal complaint;
  - d) Explain that if the respondent chooses an informal resolution, that the respondent may withdraw from the informal resolution process at any time prior to the conclusion of the informal resolution process and pursue a formal resolution process, but may not do so after the conclusion of the informal resolution process;
  - e) Explain that records related to the informal resolution process will be maintained for a period of seven years and be made part of the record if a formal resolution process is pursued;
  - f) Explain the investigative process, including the right to discuss the allegations under investigation and to present fact and expert witnesses and other relevant evidence;
  - g) Discuss confidentiality standards and concerns with the respondent;
  - h) Discuss non-retaliation requirements;
  - i) Inform the respondent of any interim measures that will be imposed and any supportive measures that will be provided to the respondent during the pendency of the investigative and resolution processes;
  - j) Refer the respondent to campus and community resources, as appropriate;
  - k) Discuss the respondent's the right to due process and a prompt, fair, and impartial resolution of the formal complaint;
  - l) If the respondent is a student and the formal complaint involves an alleged act of sexual violence as defined in this Policy, explain to the respondent that the College will include a notation on the academic transcript if the respondent is suspended or dismissed after being found responsible, or if the respondent withdraws while under investigation, that the investigation may continue in the respondent's absence, if possible, while being afforded notice of all meetings and the live

hearing, if applicable, and an opportunity to inspect, review, and respond to all the evidence; and

m) Answer questions about the Policy and procedures.

5. Title IX Coordinator's Initial Determination.

- a) Mandatory Dismissal of Formal Complaint. After completing the initial meetings, the Title IX Coordinator must dismiss the formal complaint if:
- (1) the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this Policy even if proved;
  - (2) the conduct did not involve an education program or activity of the College;
  - (3) the conduct did not occur against a person in the United States.
- b) Optional Dismissal of Formal Complaint. The Title IX Coordinator may dismiss the formal complaint if:
- (1) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations. If a complainant requests to withdraw a formal complaint, the Title IX Coordinator will consider the factors listed in Section V1 in determining whether to sign the formal complaint;
  - (2) the respondent is no longer enrolled or employed at the College; or
  - (3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or any of its allegations.
- c) After dismissing the formal complaint, the Title IX Coordinator shall forward the formal complaint to an appropriate College official that will determine whether the conduct alleged in the formal complaint violates a separate policy or code of conduct.
- d) The Title IX Coordinator will send written notice of the dismissal with specific reason(s) for the dismissal to the parties, simultaneously, within five (5) workdays of completing the initial meetings. This decision may be appealed.

6. Appointment of the Investigator and Conduct of the Investigation.

- a) Appointment of Investigator. After an initial determination to continue the formal resolution process or after failed informal resolution process, the Title IX Coordinator will appoint an investigator within five (5) workdays of completing the initial meetings. The Title IX Coordinator will provide the investigator's name and contact information to the complainant and respondent and will forward the formal complaint to the investigator. Within five (5) workdays of such appointment, the

investigator, the complainant, or the respondent may identify to the Title IX Coordinator in writing any potential conflict of interest or bias of the appointed investigator. The Title IX Coordinator will consider such information and will appoint a different investigator if it is determined that a material conflict of interest or bias exists.

- b) Contacting the Parties. The investigator will contact the complainant and respondent promptly. In most cases, this should occur within ten (10) workdays from the date of the investigator's appointment. The investigator will schedule meetings with the parties. The parties may provide supporting documents, evidence, and recommendations of witnesses, including character and expert witnesses, to be interviewed for the investigation. Each party may have one advisor present during any meeting with the investigator; however, the advisor may not speak on the party's behalf.
- c) Weighing of the Evidence. As part of the investigation, the investigator must weigh the credibility and demeanor of the complainant, respondent, and witnesses, and ensure that credibility determinations are not based on a person's status as a complainant, respondent, or witness; the logic and consistency of the evidence, motives, and any inculpatory and exculpatory evidence.
- d) Withdrawal of a Student During an Investigation. The withdrawal of a student from the College while under investigation for an alleged act of sexual violence as defined by this Policy in most cases will not end the College's investigation and resolution of the complaint. The College shall continue the investigation, if possible, as set forth under this Policy. The College shall notify the student in writing of the investigation and afford the student the opportunity to provide evidence, to inspect, review, and respond to all the evidence and the written investigative report prior to making a determination on responsibility.
  - (1) Upon the student's withdrawal, the College shall place a notation on the student's academic transcript that states, "*Withdrew while under investigation for a violation of [name of community college's] Title IX Policy.*" After the College has completed its investigation and resolution of the complaint, the College shall either (a) remove the notation if the student is found not responsible or (b) change the notation to reflect either a suspension or dismissal for a violation of the Policy if either was imposed.
  - (2) The College shall end the investigation and resolution of the complaint if the College cannot locate the respondent to provide due process. In such cases, the College shall maintain the withdrawal notation on the student's academic transcript. Upon a final determination, the Title IX Coordinator immediately shall notify the registrar and direct that the appropriate notation is made.

- e) Inspection and Review of the Evidence. The parties will have the opportunity to inspect, review, and respond to all the evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination of responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The investigator will send each party and each party's advisor, if any, a copy of the evidence subject to review. The parties will have ten (10) workdays to submit a written response to the evidence and the option to submit additional evidence, which the investigator will consider prior to the completion of the investigative report. Neither the parties nor their advisors may disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX formal resolution process. Nevertheless, the College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- f) Investigative Report. The investigator will complete an investigative report that fairly summarizes relevant evidence, including but not limited to, all interviews conducted, photographs, descriptions of relevant evidence, the rationale for credibility determinations, summaries of relevant records, and a detailed report of the events in question. The investigative report shall include the following information to the extent possible:
- (1) The name and gender of the complainant and, if different, the name and gender of the person reporting the allegation;
  - (2) The names and gender of all persons alleged to have committed the alleged violation;
  - (3) A statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
  - (4) The dates of the report and formal complaint were filed;
  - (5) The dates the parties were interviewed;
  - (6) The names and gender of all known witnesses to the alleged incident(s);
  - (7) The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;
  - (8) Any written statements of the complainant or the alleged victim if different from the complainant; and
  - (9) The date on which the College deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and the

date on which the College resumed its investigation and disciplinary process, if applicable.

- g) Submission of the Investigative Report. The investigator will submit the investigative report to the Title IX Coordinator, who will send the investigative report to the parties and the parties' advisors, if any, simultaneously for review and written response as soon as possible, but no later than five (5) workdays after receiving the investigative report from the investigator. The parties will have ten (10) workdays to submit a written response to the investigative report to the Title IX Coordinator. The Title IX Coordinator will not consider the parties' written responses but will ensure that such statements are added to the record. Neither the parties nor their advisors may disseminate the investigative report or use such report for any purpose unrelated to the Title IX formal or informal resolution process.

#### ***H. Conduct of Live Hearing***

1. The Title IX Coordinator will appoint a Hearing Officer [and members of the Hearing Committee, if preferred by the College] within ten (10) workdays after sending the investigative report to the parties and their advisors, if any. Within five (5) workdays after the appointment, the Hearing Officer will contact the parties to schedule a live hearing. The parties have five (5) workdays after being contacted by the Hearing Officer to notify the Title IX Coordinator in writing of any potential conflict of interest or bias of the Hearing Officer. The Title IX Coordinator will consider such information and will appoint a different Hearing Officer if the Title IX Coordinator determines that a material conflict of interest or bias exists. When the date, time, and place of the live hearing is confirmed, the Hearing Officer will notify the parties in writing simultaneously of the date, time, and place of the live hearing.
2. No later than fifteen (15) workdays before the live hearing, each party must notify the Hearing Officer and the other party of the following:
  - a) the name and contact information of the advisor, if new, or notification that a party does not have an advisor available for the hearing, if applicable;
  - b) the names and contact information of witnesses that will be called at the live hearing and the purpose of their testimony at the live hearing;
  - c) whether a party intends to be subjected to cross-examination;
  - d) a description of documents or other evidence and the purpose of such evidence that will be used at the live hearing;
  - e) the specific remedy requested; and,

- f) whether a party requests that the live hearing occurs with the parties located in separate rooms with technology that enables the Hearing Officer and the parties to see and hear the party or the witness answering questions simultaneously. Only one party is required to make the request for separate rooms.
3. The Hearing Officer will notify the Title IX Coordinator promptly that the College must appoint an advisor for a party when notified of the need for an advisor. The Title IX Coordinator will appoint the advisor promptly, but no later than ten (10) workdays prior to the live hearing. If a party appears at a live hearing without an advisor, the Hearing Officer shall delay the start of the live hearing until an advisor is available.
4. The Hearing Officer shall ensure that all evidence obtained during the investigation is made available to the parties at the live hearing.
5. Rules of the Live Hearing.
  - a) Evidence. The formal rules of evidence will not be applied except to determine whether the evidence or question presented is relevant or cumulative.
    - (1) Either party may call character or expert witnesses.
    - (2) Questions and evidence about a party's sexual predisposition or prior sexual behavior are not relevant, unless:
      - (a) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
      - (b) the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
    - (3) If the evidence or witness testimony is, on its face, not relevant or is cumulative, the Hearing Officer may exclude such evidence or witness statement(s), with the rationale for the decision in the pre-hearing determination. The parties may object in writing to such determination within five (5) workdays of the determination. The Hearing Officer shall rule on the objection within five (5) workdays of receipt of the objection.
  - b) Standard of Evidence. The live hearing will determine responsibility using the preponderance of the evidence standard.
  - c) Participation of Parties and Witnesses. Neither party may choose to waive the right to a live hearing, but parties and witnesses may choose whether to participate in the live hearing or submit to cross-examination.
  - d) Recording or Transcript. The Hearing Officer will arrange for the live hearing to be recorded. Each party will receive a copy of the recorded live hearing upon

request. Parties may prepare a transcript of the recording at their own expense. Neither the parties nor their advisors may disseminate the record or transcript or use such record or transcript for any purpose unrelated to the Title IX formal resolution process or related civil proceeding.

- e) Opening Statements and Closing Statements. At the sole discretion of the Hearing Officer, the parties may make opening and/or closing statements at the live hearing. The Hearing Officer will determine the time that is allotted for each.
- f) Pre-Hearing Determinations. No later than ten (10) workdays prior to the live hearing, the Hearing Officer shall decide (1) whether to exclude any of the proposed evidence or witnesses, and the basis upon which such evidence or witness is excluded; and (2) whether to allow opening statements and closing arguments and the time allotted for both.
- g) Rules of Conduct During the Live Hearing. All live hearings will be closed to the public and witnesses will be present only during their testimony. For live hearings that use technology, the Hearing Officer shall ensure that appropriate protections are in place to maintain confidentiality.
  - (1) The College will require all parties, advisors, and witnesses to maintain appropriate decorum throughout the live hearing. Participants at the live hearing are expected to abide by the Hearing Officer's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices.
  - (2) Repeated violations (generally, more than two) of appropriate decorum will result in a break in the live hearing, the length of which shall be determined by the Hearing Officer. The Hearing Officer has the sole discretion to appoint a different advisor to conduct cross-examination on behalf of a party after repeated violations of appropriate decorum or other rules related to the conduct of the live hearing.

## 6. Role of the Advisor.

- a) The role of the advisor at the live hearing is to conduct cross-examination on behalf of a party. The advisor is not to "represent" a party, but only to relay the party's cross-examination questions that the party wishes to have asked of the other party and witnesses so that parties never personally question or confront each other during a live hearing. A party shall not conduct cross-examination on his or her behalf.
- b) Each party may retain an attorney at his or her expense or designate a non-attorney advisor to accompany him or her at the live hearing. The advisor may provide advice and consultation to the parties or the parties' witnesses outside of

the conduct of the live hearing to assist parties in handling the formal resolution process.

- c) A party's advisor must conduct cross-examination at the live hearing directly, orally, and in real time. Only relevant cross-examination questions and follow-up questions, including those that challenge credibility, may be asked. Advisors may not raise objections or make statements or arguments during the live hearing.
- d) The College shall appoint an advisor for the live hearing at no cost to a party when the party does not have an advisor. The appointed advisor may be but is not required to be a licensed attorney or anyone with formal legal training. Advisors may be faculty, staff, students, or volunteers from the local community.

#### 7. Role of the Hearing Officer.

- a) The role of the Hearing Officer is to preside over the live hearing in a fair and impartial manner. After the live hearing, the Hearing Officer must issue a written determination regarding responsibility using the preponderance of the evidence standard of evidence. The Hearing Officer will be the final decision-maker on all matters of procedure during the live hearing.
- b) Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Officer first must determine whether the question is relevant or cumulative and explain any decision to exclude a question that is not relevant or is cumulative.
- c) The Hearing Officer may question the parties and witnesses, but they may refuse to respond.
- d) The Hearing Officer must consider all relevant evidence, including statements of a party or witness, even if such statement was not subjected to cross-examination at the live hearing. In determining the amount of weight, the Hearing Officer will give to such a statement, the Hearing Officer should consider the reliability of the statement. Factors to consider include, but are not limited to, whether a party or witness commented on or challenged the statement prior to the live hearing, whether the statement is a rumor or something of which the party or witness does not have first-hand knowledge, and whether the person who made the statement has a motive or a conflict of interest that can be demonstrated through other evidence. The level of reliability will determine the amount of weight the Hearing Officer will give to the statement when reaching a determination regarding responsibility. Additionally, the Hearing Officer must not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

- e) Within ten (10) workdays after the live hearing, or with good cause shown as soon as possible, the Hearing Officer will submit a written determination to the Title IX Coordinator. The Hearing Officer must make a finding of responsibility or non-responsibility for each allegation and describe the rationale for the finding based on an objective evaluation of the evidence presented at the live hearing. The written determination shall include the following:
- (1) Identification of the allegations potentially constituting sexual harassment defined under this Policy;
  - (2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and live hearings held. The description of the procedural steps also should include who performed the investigation and the process taken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines;
  - (3) Findings of fact supporting the determination;
  - (4) Conclusions regarding the application of this Policy to the facts;
  - (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any range of disciplinary sanction(s) to be imposed on the respondent, and whether (not which) remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant.
  - (6) When applicable, a statement that a notation will be placed on the academic transcript that the respondent was suspended or dismissed for a violation of the College's Title IX Policy.
  - (7) When applicable, a statement that the respondent may request the expungement of the notation on the academic transcript for good cause shown and after a period of three years.
  - (8) The College's procedures and permissible bases for the complainant and the respondent to appeal. If the complainant or respondent does not contest the finding or recommended sanction(s) and/or remedies and does not file an appeal within the required time frame, the written determination shall be final.

## ***I. Actions Following the Written Determination***

1. The role of the Title IX Coordinator following the receipt of the written determination from the Hearing Officer is to facilitate the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process.
2. The Title IX Coordinator must provide the written determination to the parties simultaneously, with a copy to Human Resources, Conduct Officer, and/or other College officials, as appropriate. The appropriate college official, after consultation with the Title IX Coordinator, will determine the sanction(s) imposed and remedies provided, if any.
3. The parties shall receive the final decision on the imposition of sanction(s), if any, and the provision of remedies, if any, simultaneously within ten (10) workdays of receipt of the written determination by the appropriate college official(s). The College must disclose to the complainant the sanction(s) imposed on the respondent that directly relate to the complainant when such disclosure is necessary to ensure equal access to the College's education program or activity.
4. The Title IX Coordinator shall confer as necessary with employees, community resources, or other support services that will provide such remedies.
5. Any sanctions to be imposed or remedies to be provided should begin after five (5) workdays of issuing the final decision unless a party file an appeal.
6. If the respondent is a third party, the Title IX Coordinator will forward the written determination to [vice president/police chief, or other college official]. Within ten (10) workdays, the [designated official] shall determine and impose appropriate sanction(s), as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s) in the final decision, if any. The Title IX Coordinator may disclose to the complainant information as described above.

## ***J. Appeals***

1. Within five (5) workdays of receipt of the final decision, either party may appeal the Hearing Officer's written determination regarding responsibility and the final decision related to sanctions and remedies. The parties also may appeal the College's dismissal of a formal complaint or any of its allegations therein within five (5) workdays of such dismissal. The appeal must be in writing and submitted to the Title IX Coordinator, who will appoint an Appeal Officer within five (5) workdays of receipt of the appeal. The Appeal Officer's decision is final.
2. The Appeal Officer will grant an appeal only on the following bases:
  - a) Procedural irregularity that affected the outcome of the matter;

- b) New evidence that was not reasonably known or available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and,
  - c) The Title IX Coordinator, investigator(s), or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
3. Within five (5) workdays of receipt of an appeal request, the Title IX Coordinator will notify the other party that an appeal has been filed and implement appeal procedures equally for both parties.
  4. The Title IX Coordinator will compile the record, including the notice of allegations, evidence obtained, investigative report, live hearing recording, written determination, and final decision. The Title IX Coordinator shall forward the record with the appeal request to the Appeal Officer as soon as possible, but no later than ten (10) workdays of receipt of the appeal request.
  5. The Appeal Officer must not be the Hearing Officer, the investigator, or the Title IX Coordinator and be free from conflict of interest and bias.
  6. Upon receipt of the request for the appeal and the record, the Appeal Officer shall decide whether to grant the appeal, including the rationale for the decision, and notify the parties whether the appeal has been granted simultaneously. The decision shall be made within ten (10) workdays of receipt of the appeal request and record from the Title IX Coordinator.
  7. If the Appeal Officer grants the appeal, he or she will notify the parties that they have five (5) workdays to submit a written statement in support of, or against, the outcome of the written determination, final decision, or dismissal of the formal complaint. The Appeal Officer may grant additional time for good cause to both parties.
  8. The Appeal Officer shall make the decision based on the record and the parties' written statements, if any. The Appeal Officer shall not receive additional statements or testimony from any other person.
  9. The Appeal Officer shall issue a written determination of the result of the appeal and the rationale for such result within ten (10) workdays of receipt of written statements, if any. The Appeal Officer shall provide the written determination to the parties simultaneously.
  10. At the conclusion of the appeal, the Title IX Officer shall facilitate the imposition of sanctions, if any, and the provision of remedies, if any.

## **K. Informal Resolution Process**

1. The informal resolution process is available under the following conditions:
  - a) The complainant has filed a formal complaint of hostile environment sexual harassment involving parties with the same status (e.g., student-student or employee-employee);
  - b) The Title IX Coordinator has completed the steps described in Sections V1 through V4; and,
  - c) The parties voluntarily request in writing to resolve the formal complaint through the informal resolution process.
2. Within five (5) workdays after the receipt of the written request to start the informal resolution process, the Title IX Coordinator will appoint a College official to facilitate an effective and appropriate resolution ("Facilitator"). The Title IX Coordinator may serve as a Facilitator. Within five (5) workdays of such appointment (or receipt of the written request), the parties may identify to the Title IX Coordinator in writing any potential conflict of interest or bias posed by such Facilitator to the matter. The Title IX Coordinator will consider such information and will appoint another Facilitator if it is determined that a material conflict of interest or bias exists. Within five (5) workdays of the appointment (or receipt of the written request), the Facilitator will request a written statement from the parties to be submitted within ten (10) workdays. Each party may request that witnesses are interviewed, but the Facilitator will not conduct a full investigation as part of the informal resolution process.
3. Within ten (10) workdays of receiving the written statements, the Facilitator will hold a meeting(s) with the parties and coordinate informal resolution measures. The Facilitator shall document the meeting(s) in writing. Each party may have one advisor of his or her choice during any meeting; however, the advisor may not speak on the party's behalf.
4. The informal resolution process should be completed within thirty (30) workdays in most cases, unless good cause exists to extend the time. The parties will be notified in writing and given the reason for the delay and an estimated time of completion.
5. Any resolution of a formal complaint through the informal resolution process must address the concerns of the complainant and the responsibility of the College to address alleged violations of the Policy, while also respecting the due process rights of the respondent.
6. At the conclusion of meetings, interviews, and the receipt of statements, the Facilitator will write a summary of such in a written informal resolution report and provide the parties with the informal resolution report simultaneously. The written informal resolution report shall include the notice of allegations, a meeting(s) summary, remedies provided, if any, sanctions imposed, if any, and whether the formal complaint was resolved

through the informal resolution process. The Facilitator will forward the written informal resolution report to the Title IX Coordinator, when applicable.

7. At the conclusion of the informal resolution process, if the formal complaint was resolved to the satisfaction of the parties, the parties will provide a written and signed statement as such for the record. The decision will be final, and the matter will be closed.
8. At any time prior to resolving a formal complaint through the informal resolution process, either party may withdraw in writing from the informal resolution process and resume or begin the formal resolution process.
9. If the formal complaint is not resolved through the informal resolution process, the Title IX Coordinator shall resume the formal resolution process.
10. The Facilitator shall not be a witness as part of the formal resolution process, but the written informal resolution report (if applicable) shall be part of the record.