

**Approved By:** Board of Trustees

**Date Approved:** September 25, 2020

**Effective Date:** September 25, 2020

1. **Summary:** This policy establishes and provides a procedure for resolving complaints of Sexual Discrimination.
2. **Rationale:** Criswell College (“Criswell” or the “College”) has a moral and legal obligation to provide an environment that is free from Sexual Discrimination. The purpose of this Policy is to maintain such an environment and to comply with all applicable legal requirements prohibiting Sexual Discrimination against members of the College community, including but not limited to Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972,<sup>1</sup> the Texas Commission on Human Rights Act, and the Texas Education Code.<sup>2</sup>

3. **Entities Affected:** all constituents

4. **Definitions:**

*employee:* an individual who receives compensation for work or services for which the College has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service. Volunteers and independent contractors are not considered “employees” for the purposes of this Policy.

*Complainant:* an individual who is reported to be or alleges that they were the victim of conduct that violates this Policy

*Respondent:* an individual who has been accused of engaging in conduct that violates this Policy

*Sex Discrimination:* conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects the individual’s or group’s employment or education on account of sex. “Sex Discrimination” includes, but is not limited to, Sexual Harassment, Sexual Violence, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

*Sexual Harassment:* conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

*Quid Pro Quo Sexual Harassment:* when an employee of the College conditions the provision of aid, benefit, or service of the College on an individual’s participation in unwelcome sexual contact.

*Hostile Environment Sexual Harassment:* unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the College’s education programs and activities.

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<sup>1</sup> As a religious institution, Criswell has requested particular exemptions from Title IX requirements so that the College can faithfully follow the Biblical values regarding sexuality as articulated in the College’s Articles of Faith, Bylaws, and policies. Criswell College reserves the right to implement this Policy in accordance with the principles articulated in those documents.

<sup>2</sup> In addition to this Policy, the College has a comprehensive Non-Discrimination Policy, which prohibits discrimination based on race, color, religion, national origin, age, disability, veteran status and/or other legally protected categories.

*Sexual Assault*: the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape<sup>3</sup>

- *Rape*: the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- *Sodomy*: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- *Sexual Assault with an Object*: using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
- *Fondling*: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- *Incest*: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Texas law
- *Statutory Rape*: sexual intercourse with a person who is under the statutory age of consent as defined by Texas law

*Domestic Violence*: felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Texas,<sup>4</sup> or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Texas

*Dating Violence*: violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of such a relationship will be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

*Stalking*: engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress. Stalking as defined in

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<sup>3</sup> The College’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the College to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

<sup>4</sup> Family Violence is defined by the Texas Family Code Section 71.004 as:

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or Sexual Assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or Sexual Assault, but does not include defensive measures to protect oneself;
- (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or
- (3) Dating violence, as that term is defined by Section 71.0021.

this Policy includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact

- *Course of Conduct*: two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, or communicates to or about a person threats, that a reasonable person would regard as threatening bodily injury or death of that person, their family members including someone with whom the person is dating or interferes with that person’s property
- *Reasonable Person*: a person under similar circumstances and with similar identities to the person subjected to the stalking behavior would fear for their safety or the safety of others, or suffer substantial emotional distress
- *Substantial Emotional Distress*: significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling
- Stalking can involve behaviors including, but not limited to:
  - intentional and repeated uninvited presence of the alleged perpetrator at another’s home, workplace, school, or any place which would cause a reasonable person to be alarmed;
  - following an individual without a reasonable justification for being in a particular area or taking a particular route;
  - lying in wait;
  - excess communications, including any attempt to unreasonably, intentionally, and repeatedly make contact with a person over their stated objections; or
  - threats to the individual or threats to the individual’s family, friends, pets, or property.

*Consent*: words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.

*Incapacitated*: the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

*Coercion*: conduct, including intimidation and express or implied threats of emotional, educational, reputational, financial, or other harm that would place a reasonable person in fear of immediate or future harm and that is employed to persuade or compel someone to engage in unwelcome sexual contact.

*Retaliation*: intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an 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. Retaliation is prohibited and is considered a stand-alone policy violation without regard to any finding of responsibility for violation of this policy.

*Formal Complaint*: a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Sexual Harassment in accordance with this Policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the College’s education programs and activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

*Supportive Measures:* non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the College's Education Programs and Activities without unreasonably burdening another Party, including measures designed to protect the safety of all parties implicated by a report or the College's education environment, or to deter Sexual Harassment. Supportive measures may include counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, withdrawal from or re-taking a class without penalty, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

*Education Programs and Activities:* all the operations of the College, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the College. It also includes off-campus locations, events, or circumstances over which the College exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the College.

## **5. Policy:**

### **a. Scope**

This Policy applies to Sexual Harassment that occurs within the College's Education Programs and Activities and that is committed by any member of the College's Community, including an administrator, faculty member, staff, student, contractor, guest, or other member of the College Community. This Policy does not apply to Sexual Harassment that occurs off campus, in a private setting, and outside the scope of the College's Education Programs and Activities; such Sexual Harassment may be prohibited by other College policies and standards, including the College's Non-Discrimination Policy.

If an individual accused of violating this Policy is no longer affiliated with the College when the report is received, the College may not conduct an investigation into the allegations but reserves the right to document the report and address the allegations with the accused individual prior to that individual returning to the College as a student, employee, or visitor. A decision to not conduct a formal investigation into the allegations against an accused individual no longer affiliated with the College does not preclude the provision of supportive measures to the Complainant or other affected individuals.

As a religious institution, Criswell College is exempt<sup>5</sup> from some of Title IX's requirements because of its affiliation with the Southern Baptists of Texas Convention and its adherence to the Convention's Articles of Faith. The College has requested such exemptions so that it may faithfully follow the Biblical values regarding gender and sexuality articulated in its Articles of Faith, Bylaws, and policies, and will apply this Policy in accordance with those principles.

### **b. Understanding Hostile Environment Sexual Harassment**

In determining whether a Hostile Environment exists, the College will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The College will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's

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<sup>5</sup> See 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12.

position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The College encourages members of the College Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Sexual Harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender stereotyping, even if those acts do not involve conduct of a sexual nature. Further, making employment or educational decisions based on sexual favoritism or on the basis of gender is strictly prohibited.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact;
- Unwelcome kissing, hugging, or massaging;
- Sexual innuendos, jokes, or humor;
- Displaying sexual graffiti, pictures, videos, or posters;
- Using sexually explicit profanity;
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- E-mail and Internet use that violates this policy;
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin;
- Sending sexually explicit emails, text messages, or social media posts;
- Commenting on a person's dress in a sexual manner;
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; or
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes.

### c. **Understanding Consent and Incapacitation**

#### ● **Consent**

Consent exists when someone knowingly, voluntarily, and by word or action agrees to engage in mutually agreed upon sexual activity or contact. Consent is active and not passive. It is the responsibility of the initiator of any sexual activity to obtain their partner's consent. While consent may be expressed by words or actions, it is highly recommended that consent be expressed and obtained verbally. Silence should not be interpreted as consent.

Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

- Consent to one act does not constitute consent to another act.
- Consent on a previous occasion does not constitute consent on a later occasion.
- Consent to an act with one person does not constitute consent to an act with any other person
- The existence of a prior or current relationship does not constitute consent. Even in the context of a relationship, there must be mutual consent.
- Consent can be withdrawn or modified at any time, and sexual contact must stop immediately once consent is withdrawn.
- Consent cannot be inferred from silence, passivity, or lack of resistance.
- Relying on nonverbal communication alone may result in a violation of this Policy.

In evaluating Consent, the College will consider the presence of any force, threat of force, or Coercion,

whether the Complainant had the capacity to give Consent, and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular sexual act.

An individual is unable to provide Consent to engage in sexual activity when the individual:

- Is under age 17 and (1) is not a spouse of the Respondent or (2) is more than three years younger than the victim at the time of the offense;
- Has a mental disorder or developmental or physical disability that renders her or him incapable of giving knowing Consent;
- Is unconscious or physically unable to resist; or
- Is Incapacitated from alcohol or other drugs, and this condition was known, or reasonably should have been known, by the Respondent.

- **Incapacitation**

Incapacitation is a state where an individual cannot make an informed and rational decision to Consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (*e.g.*, to understand the “who, what, where, when, why, or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered Incapacitated, and therefore unable to give Consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was Incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s Incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish Incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating Incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act

Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness. The existence of any one of these factors may support a finding of incapacitation for the purposes of this policy.

**d. Reporting Sexual Harassment**

The College recognizes the right of a victim of Sexual Harassment to report the incident to appropriate authorities and to receive a prompt and equitable resolution of the report. The College strongly encourages community members who feel that they are victims of Sex Discrimination to report alleged incidents of Sex Discrimination following the reporting protocol below.

- **Title IX Coordinators**

The Title IX Coordinator and the Deputy Title IX Coordinators will be responsible for the oversight and implementation of this Policy. Reports may be made in person, by regular mail, telephone, electronic mail, online at [www.criswell.edu/title-ix/](http://www.criswell.edu/title-ix/), or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. In-person reports must be made during normal business

hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours, to the following individuals:

Criswell College Title IX Coordinator  
Matt Brittain  
mbrittain@criswell.edu  
214-818-1329  
4010 Gaston Ave  
Dallas, TX 75246

Deputy Title IX Coordinator  
Valeri Knighten  
vknighten@criswell.edu  
214-818-1347  
4010 Gaston Ave  
Dallas, TX 75246

- **Mandatory Reporting Requirement for Employees**

Under Texas law, all College employees, with the exception of Confidential Employees, who:

- in the course and scope of their employment<sup>6</sup>
- witnesses or receives information regarding an incident that the employee reasonably believes constitutes Sexual Harassment,<sup>7</sup> Sexual Assault, Dating Violence, or Stalking, which
- is alleged to have been committed by or against a person who was a student enrolled at or an employee of the College at the time of the incident

**must promptly report** the incident to the College's Title IX Coordinator or Deputy Title IX Coordinator.

**Writing Required:** Employees should submit written reports to the College's online reporting form, available at: [www.criswell.edu/title-ix/](http://www.criswell.edu/title-ix/). An email or written memo is also acceptable if it can be delivered to a Coordinator promptly after the employee's duty to report arises. If the urgency of the situation or other circumstances necessitate an initial oral report (whether in person or by phone), the employee should take steps to submit a written report to the Title IX Coordinator promptly thereafter.

**Report Contents:** The employee's report must include all information concerning the incident known to the employee, which is relevant to an investigation under this Policy, including whether the subject of the report has expressed a desire for an institutional response to the incident or made a request for confidentiality in reporting the incident.

**Confidentiality:** Unless waived in writing by the affected individual, the identity of an alleged victim of an incident reported pursuant to this mandatory reporting requirement may be disclosed only to:

- employees of the College who are charged with receipt of the report and/or those who are necessary to investigate the report and/or conduct any related hearings;
- a law enforcement officer as necessary to conduct a criminal investigation of the report;
- the person or persons alleged to have perpetrated the incident (to the extent required by law); and/or
- potential witnesses to the incident as necessary to conduct an investigation of the report.

Due to the confidential nature of the report and investigation process, the reporting employee will likely not receive any further information about the outcome of the report.

**Exceptions:** The mandatory reporting requirement does not apply to:

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<sup>6</sup> "Course and Scope of Employment" means an employee performing duties in the furtherance of the institution's interests.

<sup>7</sup> For the purposes of Texas's mandatory reporting requirement only, "Sexual Harassment" means: unwelcome, sex-based verbal or physical conduct that (a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or (b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the College's educational programs or activities.

- Employees who are themselves victims of sexual harassment, sexual assault, dating violence, or stalking;<sup>8</sup>
- Students enrolled at the institution;<sup>9</sup> or
- Instances when an employee receives information about sexual harassment, sexual assault, dating violence, or stalking at a public awareness event sponsored by the College.

**Consequences of Non-compliance:** An employee who fails to make a required report of sexual harassment, sexual assault, dating violence, or stalking will be terminated and may also be subject to criminal prosecution.<sup>10</sup>

**Immunity:** An employee who, in good faith reports or assists in the investigation of a report under this Policy, or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident, will not be subject to disciplinary action under the College’s employment policies. This immunity does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this policy or who commits a criminal offense pursuant to Texas Education Code section 51.255(a).

- **Confidential Employees**

Individuals appointed are designated confidential reporting sources (a “Confidential Employee”).<sup>11</sup> Members of the College Community may speak to officially designated Confidential Employees about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking without the conversation triggering a mandatory report of incident details. A Confidential Employee may not disclose any communication made by a student to the Confidential Employee unless:

- the student consents to the disclosure; or
- the Confidential Employee is making a Mandatory Report as required by this Policy or Texas law, in which case the Confidential Employee must only state the type of incident reported and may not include any information that would violate a student’s expectation of privacy.

**A Confidential Employee is not required to report any information that would violate an individual’s expectation of privacy, such as the name or other identifying information of an individual who has experienced or allegedly engaged in Sexual Harassment.**

This provision does not affect the employee’s duty to report an incident under any other law, including any mandatory reporting requirements for incidents involving minors.

- **Law Enforcement**

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<sup>8</sup> To clarify, employees are encouraged but **not** required to report instances of sexual harassment, sexual assault, dating violence, or stalking when **they** are the alleged victims of such offenses.

<sup>9</sup> This exception applies to traditional “students-workers” working part-time at the College, and not full-time employees taking courses at the institution. The exception does not apply to students employed as Resident Assistants.

<sup>10</sup> Texas Education Code section 51.255(a) makes it a Class B misdemeanor (punishable by a maximum of 180 days in jail and/or a maximum fine of \$2,000) for a person who “is required to make a report under Section 51.252 and knowingly fails to make the report” or “with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false.” The offense is escalated to a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) “if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report under Section 51.252.” Student employees, including resident assistants, are exempted from Section 51.255’s criminal prosecution provision.

<sup>11</sup> Under Texas law, a “Confidential Employee” is an employee (1) designated by the College as a person with whom students may speak confidentially concerning Sexual Harassment, Sexual Assault, Dating Violence, or Stalking or (2) receives information regarding such an incident under circumstances that render the employee’s communications confidential or privileged under other law.



The College recognizes and supports the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement. In addition, it is important for a victim of sexual harassment, sexual assault, dating violence, or stalking to go to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after an incident. The College encourages anyone who believes they experienced or witnessed a crime to make a report to Campus Police, if the assault occurred on campus, or to local law enforcement, if the assault occurred off campus. For immediate law enforcement assistance, students may contact Campus Police at 214.818.1333 or dial 1333 from any campus phone or by dialing 911.<sup>12</sup>

- **Anonymous Reporting**

Anyone can make an anonymous report by submitting information on the Criswell Title IX website: [www.criswell.edu/title-ix/](http://www.criswell.edu/title-ix/).

- **Requests for Anonymity**

Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action be taken. However, the College must determine whether or not they are required to investigate an alleged incident, even against such a request, in order to protect the health and safety of the College community. As necessary, the College reserves the right to initiate a Formal Complaint without the active participation by the victim of alleged misconduct. Factors the College may consider in evaluating whether to move forward with a complaint in these circumstances include: (1) the seriousness of the alleged incident; (2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator; (3) whether the alleged incident poses a risk of harm to others; and (4) any other factors the College determines relevant.

If the Title IX Coordinator elects to file a Formal Complaint, the College will inform the alleged victim of the incident of that decision. Even if the College determines not to investigate the alleged incident, the College may take additional steps the College deems necessary to protect the health and safety of the College's community in relation to the alleged incident.

- **Prohibition on False Complaints**

Reports of a violation of this Policy must be made in good faith. The College will not tolerate intentional false reporting of incidents. It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. However, filing a complaint or providing information which a party or witness genuinely believes is accurate (*i.e.*, in "good faith"), but which is ultimately dismissed due to insufficient evidence or found to be untrue, does not constitute intentional false reporting. Members of the College community are encouraged to seek assistance even if they are unsure that what they are experiencing is Sexual or Other Unlawful Harassment. Any person who knowingly files a false complaint is subject to disciplinary action, up to and including termination or dismissal from the College.

- **Retaliation**

No member of the College community may retaliate against another member for filing a complaint pursuant to this Policy or for cooperating in an investigation of a violation of this Policy. Complaints of retaliation should be reported immediately to the College's Title IX Coordinator. Any person who

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<sup>12</sup> Campus Title IX processes and law enforcement investigations operate independently of one another, although the College will coordinate information with the Campus Police Department.

knowingly and intentionally retaliates against an individual is subject to disciplinary action, up to and including termination or dismissal from the College.

**e. Preliminary Assessment of Report**

Upon receipt of a report, the Title IX Coordinator will conduct a preliminary assessment to determine whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of this Policy, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other College offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of this Policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

- **Contacting the Complainant**

If a report is not closed as a result of the preliminary assessment and the Complainant’s identity is known, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the following:

- the availability of Supportive Measures with or without filing a Formal Complaint;
  - the Complainant’s wishes with respect to such Supportive Measures;
  - the process for filing and pursuing a Formal Complaint;
  - the importance of going to a hospital for treatment and preservation of evidence as soon as practicable after the incident, if applicable;
  - the right to report the incident to the institution and to receive a prompt and equitable resolution of the report;
  - the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement; and
- information about resources that are available on campus and in the community.

- **Supportive Measures**

**Generally:** Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the College. The College encourages any individual who has questions or concerns to seek support of College-identified resources. The Title IX Coordinator is available to provide information about the College’s policy and procedure and to provide assistance. A list of College-identified resources is located in the Student Services Office.

**Complainant:** The Title IX Coordinator or their designee will offer and make available Supportive Measures to the Complainant upon receipt of a report of Sexual Harassment regardless of whether the Complainant elects to file a Formal Complaint.

**Respondent:** The Title IX Coordinator will notify the Respondent of the availability of Supportive Measures contemporaneously with the Respondent being notified of a Formal Complaint. Once a Formal Complaint has been initiated, the College will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The College will also

offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

**All Parties:** The College will, to the greatest extent practicable, ensure that each Party or other person who reports an incident of Sexual Harassment is offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident. In addition, all Parties are allowed to drop a course in which both Parties are enrolled without any academic penalty.

**Confidentiality:** The College will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the College's ability to provide the Supportive Measures in question.

## **f. Formal Complaint**

### **● Filing a Formal Complaint**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the College investigate and adjudicate a report of Sexual Harassment in accordance with this Policy. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the College's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in Section 5.d. above. No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the College if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College Community. Factors the Title IX Coordinator may consider include (but are not limited to):

- the seriousness of the alleged incident, including (a) whether a weapon was involved in the incident, (b) whether multiple assailants were involved in the incident, and (c) whether the incident poses a risk of recurrence;
- whether the institution has received other reports of Sexual Harassment committed by the Respondent;
- whether the alleged incident poses a risk of harm to others; and
- any other factors the College determines relevant.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the College will commence an investigation and proceed to adjudicate the matter. If the College elects to proceed as a Complainant, the College will inform the alleged victim of the incident of that decision. In all cases where a Formal Complaint is filed, the Complainant will be treated as a Party, irrespective of the Party's level of participation.

### **● Consolidation of Formal Complaints**

The College may consolidate Formal Complaints as to allegations of Sexual Harassment 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. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

- **Dismissal Prior to Commencement of Investigation**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of this Policy (*i.e.*, because the alleged conduct did not occur in the College's Education Programs and Activities).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

- **Notice of Formal Complaint**

Within five days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of or hyperlink to this Policy;
- Sufficient details known at the time so that the Parties may prepare for an initial interview with the investigator, to 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);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
- Notifying the Complainant and Respondent of their right to inspect and review evidence;
- Notifying the Complainant and Respondent of the College's prohibitions on retaliation and false statements; and
- Information about resources that are available on campus and in the community.

Should the College elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the College will provide a supplemental written notice describing the additional allegations to be investigated.

- **Presumption of Non-Responsibility**

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

- **Interim Removal**

The Title IX Coordinator or his/her designee will coordinate all services for individuals impacted by Sex Discrimination. These services include but are not limited to issuing a no-contact order, confidential counseling, academic and residence hall accommodations for students when possible, as well as referrals within the College and in the local community. In addition, the College will allow the Complainant and the Respondent to drop a course in which both parties are enrolled without any academic penalty.

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from the College's education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to promptly meet with the Respondent provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the College may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process.

For all other Respondents, including independent contractors and guests, the College retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

#### **g. Investigation**

- **Commencement and Timing**

After the written notice of Formal Complaint is transmitted to the Parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the College and not with the Parties. The investigation will culminate in a written investigation report that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the College strives to complete each investigation within 45 days of the transmittal of the written notice of Formal Complaint.

- **Equal Opportunity**

During the investigation, the investigator will provide an equal opportunity for the Parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a Party's opportunity to present testimonial and other evidence that the Party believes is relevant to resolution of the allegations in the Formal Complaint. A Party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

- **Witnesses and Evidence**

The Investigator will make reasonable attempts to contact and interview individuals who are identified as witnesses with information relevant to the allegations of misconduct. The Investigator may elect not to interview witnesses whose sole purpose is to provide character information or who are otherwise unlikely to have relevant information as determined in the sole discretion of the Investigator. The Investigator will make reasonable attempts to obtain other relevant evidence available from the parties, witnesses, or other College departments.

- **Documentation of Investigation**

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

- **Access to Evidence**

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each Party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the College may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a Party or some other source. The parties will have ten days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

- **Investigation Report**

After the period for the parties to provide any written response has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each Party and their advisor, in either electronic or hard copy form.

#### **h. Adjudication**

- **Adjudication Process Selection**

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each Party a notice advising the Party of the two different adjudication processes specified below. The notice will explain that the hearing process is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each Party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this Policy, consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

Each Party will have three days from transmittal of the notice specified below to return the signed written consent form to the Title IX Coordinator. If either Party does not timely return the signed written consent, that Party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

- **Hearing Process**

The process for adjudicating Formal Complaints is the hearing process specified in this Section. The hearing process will be used to adjudicate all Formal Complaints unless both parties timely consent to Informal Resolution.

- **Hearing Officer**

After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator.

▪ **Hearing Notice and Response to the Investigation Report**

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the College's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten days from the date of transmittal of the written notice.

A Party's written response to the investigation report must include:

- 1) To the extent the Party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- 2) Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- 3) A list of any witnesses that the Party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- 4) A list of any witnesses that the Party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- 5) Any objection that the Party has to the College's Hearing Procedures;
- 6) Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- 7) Any other accommodations that the Party seeks with respect to the pre-hearing conference and/or hearing;
- 8) The name and contact information of the advisor who will accompany the Party at the pre-hearing conference and hearing;
- 9) If the Party does not have an advisor who will accompany the Party at the hearing, a request that the College provide an advisor for purposes of conducting questioning.

A Party's written response to the investigation report may also include:

- 1) Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- 2) Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

▪ **Pre-Hearing Conference**

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary College personnel together in the same physical location. However, upon request of either Party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

- **Issuance of Notices of Attendance**

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any College employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The College will not issue a notice of attendance to any witness who is not an employee or a student.

- **Hearing**

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the College's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary College personnel together in the same physical location. However, upon request of either Party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio. The hearing may, in the hearing officer's discretion, be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- 1) Opportunity for each Party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- 2) Opportunity for each Party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other Party and any witnesses, including questions that support or challenge credibility;



- 3) Opportunity for each Party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- 4) Opportunity for each Party to submit evidence that the Party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- 5) Opportunity for each Party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary College personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them.

While a Party has the right to attend and participate in the hearing with an advisor, a Party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified above are met.

▪ **Subjection to Questioning**

In the event that any Party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the Parties' advisors, the statements of that Party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any Party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither Party requested attendance of the witness at the hearing.

In applying this Section, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a Party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

● **Deliberation and Determination**

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing

conference, during the hearing, or otherwise. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

- **Written Decision**

After reaching a determination and consulting with the appropriate College official and Title IX Coordinator as required above, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate College official;
- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the College’s process and grounds for appeal.

The hearing officer’s written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the College strives to issue the hearing officer’s written determination within 15 days of the conclusion of the hearing.

- **Discipline and Remedies**

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate College official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

Violations of this Policy shall subject the individual to disciplinary action, which may include but is not limited to:

- Disciplinary warning;
- Disciplinary sanctions;
- Disciplinary probation;
- Housing suspension;
- Disciplinary suspension; or
- Disciplinary termination or dismissal.

If a student is found Responsible for Sex Discrimination and the sanction imposed makes the student ineligible to reenroll in the College (i.e., suspension or expulsion), the College will include a notation on the student's transcript. The student may request the removal of a transcript notation imposed under this Policy if:

- the student becomes eligible to reenroll at the College; or
- the College determines that good cause exists to remove the notation.

If the College receives an appropriate request by another postsecondary educational institution, the College will provide to the requesting institution information relating to the College's determination that the student violated this Policy.

- **Administrative Adjudication**

In lieu of the hearing process, the Parties may consent to have a Formal Complaint resolved by administrative adjudication. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator. At any time prior to the issuance of the administrative officer's determination, a Party has the right to withdraw from administrative adjudication and request a live hearing.

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator.

The administrative officer will promptly send written notice to the Parties notifying the parties of the administrative officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the administrative officer separately. The administrative officer's meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A Party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the Parties' written responses, the administrative officer will meet separately with each party to provide the Party with an opportunity make any oral argument or commentary the Party wishes to make and for the administrative officer to ask questions concerning the Party's written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each Party, the administrative officer will objectively reevaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the Parties in their respective written responses to the investigation report. The administrative officer will resolve disputed

facts using a preponderance of the evidence (*i.e.*, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any College official and the Title IX Coordinator and will prepare and transmit a written decision which shall serve as a resolution for purposes administrative adjudication.

Transmittal of the administrative officer’s written determination concludes the administrative adjudication, subject to any right of appeal.

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, the College strives to issue the administrative officer’s written determination within thirty days of the transmittal of the initiating written notice.

**i. Dismissal During Investigation or Adjudication**

The College may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

**j. Appeal**

● **Grounds for Appeal**

Either Party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer, or administrative officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.
- The sanctions imposed are substantially disproportionate to the severity of the violation.

Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation and evidence available at the time of the Investigation, and pertinent documentation regarding the grounds for appeal.

- **Deadline to File Appeal**

A Party must file an appeal within seven days of the date they receive notice of dismissal or determination appealed from or, if the other Party appeals, within three days of the other Party appealing, whichever is later. The appeal must be submitted in writing to Luis Juárez, Vice President of Student Affairs and Communications, who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing Party believes the appeal should be granted, and articulate what specific relief the appealing Party seeks.

- **Resolution of Appeal**

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other Party that an appeal has been filed and that the other Party may submit a written opposition to the appeal within seven days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale. The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no Party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision. No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the College strives to issue the appeal officer's written decision within 21 days of an appeal being filed.

**k. Informal Resolution**

The College may, in the Title IX Coordinator's discretion, facilitate an Informal Resolution in accordance with the protocol outlined below.

- **Guiding Principles**

Generally, informal resolution involves a structured, supervised interaction between the Parties and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent and/or other affected community members to accept responsibility and repair harm (to the extent possible). Informal resolution may not include an investigation, hearing, or disciplinary action against a Respondent (including transcript notations), but may include imposing appropriate and reasonable remedies as agreed to by the Parties. All informal resolutions are facilitated by a trained administrator or outside expert.

- **Availability of Informal Resolution**

Informal resolution is available in matters in which the Title IX Coordinator, in the Title IX Coordinator's discretion, determines it is appropriate. Factors the College will consider when determining whether a report of Prohibited Conduct is suitable for Alternative Resolution include, but are not limited to:

- the nature and severity of the conduct, including whether the use of force or a weapon was involved;

- the Respondent's prior known disciplinary or criminal conduct, including whether the College has received other reports of Prohibited Conduct committed by the Respondent;
- whether the alleged incident poses a risk of harm to other individuals or the community;
- the dynamics of power or control commonly associated with the alleged conduct or the nature of the parties' relationship;
- whether multiple parties are affected or involved;
- any admissions of responsibility by the Respondent; and
- any other factor deemed relevant by the Title IX Coordinator or their designee in the interest of overall campus safety or safety of the parties involved.

Informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

- **Informal Resolution Process**

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the Parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the Parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another College official, or a suitable third-Party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a Party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each Party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. The College will not pressure or compel any individual to engage in mediation, to directly confront the other, or to participate in any particular form of informal resolution. Individuals may be accompanied by an adviser or support person at any meetings related to the informal resolution process.

If the Parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, appeal, remediation, or discipline by the College, except as otherwise provided in the resolution itself, absent a showing that a Party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either Party or to the College.

Any final resolution pursuant to the informal resolution process will be documented and kept for at least seven years as required by law. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process and may not be used for or against either

party (and the hearing officer and appeal officer may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

- **Termination of Informal Resolution**

A Party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

- **Deadlines for Informal Resolution**

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within 21 days. If an informal resolution process does not result in a resolution within 21 days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to informal resolution.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

## **I. Other Investigation and Adjudication Considerations**

- **Advisor of Choice**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in Section H/Hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a Party, insist that communication flow through the advisor, or communicate with the College about the matter without the Party being included in the communication. In the event a Party's advisor of choice engages in material violation of the parameters specified in this Section and Section H/Hearing, the College may preclude the advisor from further participation, in which case the Party may select a new advisor of their choice.

In the event a Party is not able to secure an advisor to attend the hearing specified in Section H/Hearing, and requests the College to provide an advisor, the College will provide the Party an advisor, without fee or charge, who will conduct questioning on behalf of the Party at the hearing. The College will have sole discretion to select the advisor it provides. The advisor the College provides may be, but is not required to be, an attorney.

The College will provide an advisor to any Party upon receipt of a request to the Title IX Coordinator or their designee. The College will provide an advisor for any Party at a hearing specified in Section H/Hearing for the purpose of cross-examining a Party or witness.

- **Conflicts of Interest, Bias, and Procedural Complaints**

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any Party who believes one or more of these College officials has a material conflict of interest or material bias must raise the concern promptly so that the College may evaluate the concern and find a substitute, if appropriate. The failure of a Party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

- **Objections Generally**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the College may evaluate the matter and address it, if appropriate.

- **Treatment Records and Other Privileged Information**

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party; or
- information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege

unless the College has obtained the Party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, may consider any such records or information otherwise covered by this Section I, if the Party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

- **Sexual History**

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

- **Student Withdrawal or Graduation Pending Disciplinary Charges**

If a student withdraws or graduates from the College pending an investigation of a complaint of Sexual Misconduct under this Policy, the College will expedite the disciplinary process as necessary to accommodate both the Complainant and the Respondent's interest in a speedy resolution and continue the investigation with or without the participation of the Respondent.

- **Academic Freedom**

The College will construe and apply this Policy consistent with the principles of academic freedom. In no case will a Respondent be found to have committed Sexual Harassment based on expressive speech or conduct that is protected by the principles of academic freedom specified in the Institutional Policy of Academic Freedom.

- **Relationship with Criminal Process**

This policy sets forth the College's processes for responding to reports and Formal Complaints of Sexual Harassment. The College's processes are separate, distinct, and independent of any criminal processes. While the College may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the College will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.



### **m. Discretion in Application**

- **Interpretation**

The College retains discretion to interpret and apply this Policy in a manner that is not clearly unreasonable, even if the College's interpretation or application differs from the interpretation of the Parties.

The provisions of this Policy and the Hearing Procedures are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the College retains discretion to revise this Policy and the Hearing Procedures at any time, and for any reason. The College may apply Policy revisions to an active case provided that doing so is not clearly unreasonable.

- **Other Sex-Based Misconduct**

This policy only applies to Sexual Harassment as defined in this Policy. The College may refer and resolve complaints of other forms of sex discrimination consistent with other institutional policies, including the College's Non-Discrimination Policy.

- **Outside Appointments, Dual Appointments, and Delegations**

The College retains discretion to retain and appoint suitably qualified persons who are not College employees to fulfill any function of the College under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer. The College also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given College official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in the College's discretion, be delegated by such College official to any suitably qualified individual and such delegation may be recalled by the College at any time.

- **Vendors, Contractors, and Third Parties**

The College does business with various vendors, contractors, and other third parties who are not students or employees of the College. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the College retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the College retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

- **Recordings**

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the College and is considered property of the College, subject to any right of access that a Party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the College is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any Party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

### **n. Requirement to Follow Policy**

For Criswell College to effectively address violations of this Policy, it must know about them. It is the responsibility of those involved to report alleged discrimination, including Sexual Harassment, Sexual Violence, Sexual Assault, Domestic Violence, Dating Violence, and Stalking as soon as possible using one of the above notification procedures. Further, all employees must cooperate in any investigation of a complaint

of Sexual Discrimination, as defined by this Policy. Each student and employee shall be provided with a copy of this Policy and be required to become aware of its contents.

**6. Procedure:**

- a. Implementation:** The procedure for implementation of this policy is embedded within the policy.
- b. Responsibility for Compliance:** Vice President of Student Affairs and Communications
- c. Notification:** Constituents of the College will be notified of this policy in accordance with all state and federal requirements.
- d. Review:** This policy will be reviewed at least every biennium in accordance with state requirements.

For the Office of the President only:

Policy version: 4.0	Policy number: 1.002
Related policies: Non-Discrimination Policy, Employee Responsibilities Policy, Gender and Marriage Policy, Student Conduct Policy	

Policy History

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