

## **Resolution Process**

### **Filing a Formal Complaint**

The timeframe for the College's Resolution Process begins with the filing of a Formal Complaint. The Resolution Process will be concluded within a reasonably prompt manner, and in ordinary cases no longer than ninety (90) business days after the filing of the Formal Complaint. The phrase "business days" shall refer to those days ordinarily recognized by the College's administrative calendar as workdays. The Process may be extended for a good reason, including but not limited to the absence of a Party, a Party's advisor, or a Witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Parties may submit a written request for an extension to the Title IX Coordinator.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. If a Complainant does not wish to make a Formal Complaint in connection with a report of Sexual Misconduct, the Title IX Coordinator may, in their discretion, determine a Formal Complaint is necessary and sign the Formal Complaint. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a Party. The Title IX Coordinator will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further, but the Complainant will still be treated as a Party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of Hearing, and the notice of outcome. At no time will the College coerce or retaliate against a Complainant or any Party or Witness in order to convince the Complainant or any Party or Witness to participate in the Resolution Process.

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

A Complainant who files a Formal Complaint may elect (if all Parties and the College agree), at any time, to address the matter through an [Alternative Resolution Process](#).

### **Multi-Party or Multi-Allegation Situations**

In its discretion, the College may consolidate Formal Complaints alleging Sexual Misconduct 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 arise out of the same facts or circumstances. In addition, the College has discretion to consolidate allegations of other forms of misconduct should they occur in the same incident. If Formal Complaints involving multiple Complainants, multiple Respondents, or multiple allegations are consolidated, each Party will have access to all of the information being considered including as provided by all

involved Complainants, all involved Respondents, and all involved Witnesses. The decision to consolidate Formal Complaints is not subject to appeal.

### **Determining Jurisdiction and Mandatory Title IX Dismissal**

The Resolution Process will apply to a Formal Complaint if, in the reasonable determination of the Title IX Coordinator, the alleged conduct fits the definition of Sexual Misconduct as defined in this Policy, i.e., the alleged conduct is “Title IX Sexual Harassment” and/or “Other Gender-Based Misconduct,” as defined herein. In addition, a Complainant filing a Formal Complaint of Title IX Sexual Harassment must be participating, or attempting to participate, in the College’s Education Programs and Activities at the time the Formal Complaint is filed in order for the Formal Complaint to be considered Title IX Sexual Harassment for purposes of the Resolution Process. If the Complainant is not participating or attempting to participate in a College Education Program or Activity, the College will dismiss the Complaint for Title IX purposes and treat the Formal Complaint as one of Other Gender-Based Misconduct.

If the alleged conduct does not meet these definitions, the Title IX Coordinator will, in consultation with the Dean of the Undergraduate College (for student-related Complaints) or the Director of Human Resources (for employee-related Complaints) determine the appropriate process for resolution.

### **Discretionary Title IX Dismissal of Complaint**

The Title IX Coordinator may, in their discretion, dismiss a Formal Complaint brought under this Sexual Misconduct Policy, or any specific allegations raised within that Formal Complaint, at any time during the Investigation or Hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Haverford College or,
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

The College retains discretion on a case-by-case basis to dismiss a Formal Complaint based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean the College will automatically dismiss the Formal Complaint. Instead, the College will determine if such a decision is appropriate under the circumstances.

### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the College will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the Parties through their College email accounts if they are a student or employee, and by other reasonable

means if they are neither. It is the responsibility of Parties to regularly check their email accounts.

Any Party may appeal a dismissal determination using the process set forth in “Appeals” section of this Policy.

### **Withdrawal or Resignation While Charges are Pending**

Should a student withdraw from the College or refuse to participate in the Resolution Process, the College reserves the right to continue with the Formal Complaint in the student’s absence. A determination of responsibility that results in a student’s suspension or expulsion will be noted on that student’s official transcript.

Should an employee resign with unresolved allegations pending, Human Resources records will reflect that status, and the College reserves the right to continue with a Formal Complaint in the employee’s absence.

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any Party to the allegations of Sexual Misconduct. Such notice will occur as soon as practicable after the College receives a Formal Complaint of the allegations if there are no extenuating circumstances.

The Parties will be notified simultaneously by their College email accounts if they are a student or employee, and by other reasonable means if they are neither. The College will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the College’s Sexual Misconduct Policy and a hyperlink to a copy of the Policy.
- Notice of the allegations potentially constituting Sexual Misconduct, and sufficient details known at the time the Notice is issued, such as the identities of the Parties involved in the incident, if known, including the Complainant, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known.
- 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 Resolution Process.
- A statement that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney.

- A statement that before the conclusion of the Investigation, the Parties may inspect and review evidence obtained as part of the Investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a Determination Regarding Responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source.
- Information regarding the availability of support and assistance through College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options.
- A statement that the College explicitly prohibits Retaliation by or against the Complainant, the Respondent, and Witnesses, that the College will take prompt action if Retaliation is reported, and instructions regarding how to report acts of alleged Retaliation.

## **Advisors**

Parties participating in the Formal Resolution Process as a Complainant or Respondent may be accompanied by an Advisor to any meeting or hearing to which they are required or are eligible to attend. The Advisor is not an advocate. Except where explicitly stated in this Policy, as consistent with the Department of Education's Final Rule, Advisors shall not participate directly in the process.

The College will reasonably attempt to accommodate meetings and hearings on dates when Advisors are available, provided that an Advisor acts reasonably in providing available dates and works collegially to find dates and times that meet all schedules. While the College will copy a Party's Advisor on communications, Parties are required to communicate with the Title IX Coordinator, Investigator, and other College staff directly; their advisors may not do so in their place. The fact that a Party's advisor did not receive any information directly from the Title IX Coordinator, investigator, or other College staff is not a basis for an extension or delay in the Process.

The College's obligation to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed by this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or Hearing under this process more than five (5) days due to the unavailability of an Advisor and may offer the Party the opportunity to obtain a different Advisor or utilize one provided by the College.

The College will provide the Parties equal access to Advisors and support persons; any restrictions on Advisor participation will be applied equally.

## **Alternative Resolution**

Parties who do not wish to proceed with an Investigation and live Hearing, and instead seek the College's assistance to resolve allegations of Sexual Misconduct, may elect to enter the Alternative Resolution Process. Generally speaking, these resolution options are less time intensive than an Investigation and Hearing, while still affording an opportunity to actively participate in a process for resolution of Complaints.

Parties may elect to enter an Alternative Resolution Process at any time after the filing of the Formal Complaint and prior to a Determination Regarding Responsibility through an informed written consent. This informed written consent will include all terms of the elected alternative process, including a statement that any agreement reached through the process is binding on the Parties.

All Parties must agree on the form of Alternative Resolution, and the Title IX Coordinator or designee must approve the decision to commence an Alternative Resolution Process and may determine that Alternative Resolution is not appropriate under the circumstances. Factors in considering the appropriateness of the Alternative Resolution Process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Alternative Resolution is only permitted to address allegations of student-on-student or employee-on-employee sexual harassment and is never allowed as an option to resolve allegations that an employee sexually harassed a student.

At any time after the commencement of the Alternative Resolution Process, the College may determine that the Alternative Resolution Process is not an appropriate method for resolving the matter and may require that the matter be resolved through the Formal Process. This determination is not subject to appeal. In addition, either Party may elect to leave the Alternative Resolution Process at any point prior to reaching a resolution. If a Party elects to leave the Alternative Resolution Process, the Formal Resolution Process may recommence, if necessary.

## **Confidentiality**

In entering the Alternative Resolution Process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the Alternative Resolution Process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the Alternative Resolution Process may be disseminated to any person, provided that any Party to the Alternative Resolution Process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the

Alternative Resolution Process, any evidence shared or received during the Alternative Resolution Process may not be used in any subsequent Formal Resolution Process or College Appeal.

### **Alternative Resolution Options**

The College offers the following Alternative Resolution options for addressing Formal Complaints of Sexual Misconduct:

#### **Administrative Resolution**

Should the Parties mutually determine to enter the Alternative Resolution Process, and the Respondent elects to accept responsibility for the allegations of the Formal Complaint at any point during the Alternative Resolution Process, the College may administratively resolve the Formal Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a Hearing Panel will convene to determine the Respondent's sanction and other remedies, as appropriate and consistent with College policy. The Parties will be given an opportunity to be heard at a sanctions hearing, including but not limited to the submission of impact statements. Parties may be accompanied by their Advisor but questioning of Parties or Witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the Appeal Process.

#### **Facilitated Resolution**

The purpose of Facilitated Resolution is for the Parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained Facilitator, identify points of agreement and appropriate remedies to address them. Either Party can request Facilitated Resolution to seek resolution; however, Facilitated Resolution will be used only with the consent of both Parties. The Parties will be instructed not to contact one another during the process. The Title IX Coordinator will review any request for Facilitated Resolution and may, in their discretion, decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the Facilitated Resolution process and choose or resume another option for resolution at any time.

During Facilitated Resolution, any potential Investigation will halt, and calculations for time frames will be stayed. If the Facilitated Resolution results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred back to the Title IX Coordinator to re-evaluate other options for resolution, including Investigation.

During Facilitated Resolution, a Facilitator will guide a discussion between the Parties. In circumstances in which the Parties do not wish to meet face-to-face, either Party can request "caucus" Facilitated Resolution, and the Facilitator will conduct separate meetings. Whether or

not the Parties agree to meet face-to-face, each Party will be permitted to bring an Advisor of their choice to any meetings. The Advisor may provide private guidance during the Facilitated Resolution but may not actively participate in the discussion between the Complainant and Respondent.

At the conclusion of the Facilitated Resolution, the Facilitator will memorialize the agreement that was reached between the Parties. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

## **Formal Resolution Process**

### **Notice of Meetings and Interviews**

The College will provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all Hearings and investigative interviews with sufficient time for the Party to prepare to participate.

### **Request for Delay**

Each Party may request a one-time delay in the Resolution Process of up to five (5) days for good cause (granted or denied in the judgment of the Title IX Coordinator, in consultation with the Dean of the College or Director of Human Resources, as appropriate), provided that the requestor provides reasonable notice, and the delay does not overly inconvenience other Parties.

The Title IX Coordinator shall have sole judgment to grant further pauses in the Process. Extensions requested after a deadline has run, rather than before the deadline has occurred, are less likely to be granted.

## **Investigation**

### **General Rules of Investigations**

The Investigator(s) will perform an Investigation under a reasonably prompt timeframe of the conduct alleged to constitute Sexual Misconduct after issuing the Notice of Allegations.

The College, and not the Parties, bears the burden of proof and the burden of gathering evidence. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred or may decide not to participate in an Investigation or Hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The College cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong or of whom the records include information. The College will provide an equal opportunity for the Parties to present Witnesses, including fact and expert Witnesses, and other inculpatory and/or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations, respectively), as described below.

### **Ongoing Notice**

If, in the course of an Investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Allegations and otherwise fall within this Sexual Misconduct Policy, the College will notify the Parties whose identities are known of the additional allegations by their College email accounts or other reasonable means.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Review of Evidence**

Prior to the completion of the Investigative Report, the Parties and their Advisors will have an equal opportunity to inspect and review the evidence obtained through the Investigation. The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the Investigation.

Evidence that will be available for inspection and review by the Parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is directly related to the allegations in the Formal Complaint, even if that evidence does not end up being relied upon by the College in determining responsibility;
2. Inculpatory or exculpatory evidence that is directly related to the allegations, whether obtained from a Party or other source.

All Parties must submit any evidence they would like the Investigator to consider prior to when the Parties' time to inspect and review evidence begins.

The College will send the evidence made available for each Party and their Advisors to inspect and review. The College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the Investigator. The Investigator will consider the Parties' written responses before completing the Investigative Report.

Any evidence subject to inspection and review will be available at any Hearing, including for purposes of questioning.

The Parties and their Advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Resolution Process.



Evidence obtained in the Investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report and may be appropriately redacted before the Parties' inspection to avoid disclosure of personally identifiable information of a student.

### **Investigative Report**

The Investigator will create an Investigative Report that accurately summarizes relevant evidence. The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide an accurate summary of the relevant evidence.

Only relevant evidence (including both inculpatory and exculpatory) will be referenced in the Investigative Report.

The Investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

### **Hearing**

#### **General Rules of Hearings**

The College will not issue a disciplinary sanction arising from an allegation of Sexual Misconduct without holding a Hearing and permitting an Appeal, unless otherwise resolved through an Alternative Resolution Process.

The Hearing may be conducted with all Parties present in the same physical location, or, at the College's discretion, any or all Parties, Witnesses, and other participants may appear at the Hearing virtually through video conference. This technology will enable participants simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a Hearing based on technological errors not within a Party's control.

#### **Continuances or Granting Extensions**

The College may determine that multiple sessions or a continuance (i.e., a pause on the continuation of the Hearing until a later date or time) is needed to complete a Hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the Hearing as promptly as practicable.

#### **Participants in the Hearing**

Hearings are not public, and only the following individuals are permitted to participate:

##### *Complainant and Respondent ("the Parties")*

- The Parties cannot waive the right to a Hearing except by participating in an Alternative Resolution.
- The College may still proceed with the Hearing in the absence of a Party and may reach a Determination Regarding Responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that Party.

- For example, an oral or written statement constituting part or all of the Sexual Misconduct itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to questioning about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the Formal Complaint.
- The decision-maker cannot draw an inference about the Determination Regarding Responsibility based solely on a Party’s absence from the Hearing or refusal to answer questions.
- Advisors shall be subject to this Policy’s [Rules of Decorum](#) and may be removed in the discretion of the Hearing Panel upon violation of those Rules.

### *The Hearing Panel*

- The Hearing Panel will consist of three (3) trained decision-makers, a Panel Chair and two Panel members. The Panel Chair may be a College administrator or an outside consultant, contracted by the College. Panel members will be appointed administrators or faculty members.
- No member of the Hearing Panel will also have served as the Title IX Coordinator, Title IX Investigator, Advisor to or Witness for any Party in the case.
- No member of the Hearing Panel may serve on the Appeals body in the case.
- No member of the Hearing Panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the case.
- The Hearing Panel will be trained on topics including how to serve impartially, issues of relevance, how to apply the rape shield protections provided for Complainants, and any technology to be used at the Hearing.
- The Parties will have an opportunity to raise any objections regarding a Hearing Panel member’s actual or perceived conflicts of interest or bias at the commencement of the Hearing.

### *Advisors*

- The Parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney.
- The Parties’ Advisors may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of questioning during a Hearing, where appropriate. (See [Questioning Procedure #1](#)).
- If a Party does not select an Advisor, the College will select an Advisor to serve in this role at the Hearing at no fee or charge to the Party.

- The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the case.
- If a Party does not attend the Hearing, the Party's Advisor may appear and ask questions on their behalf.
- If neither a Party nor their Advisor appears at the Hearing, the College will provide an Advisor to appear on behalf of the non-appearing Party.
- Advisors shall be subject to this Policy's [Rules of Decorum](#) and may be removed upon violation of those Rules.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the Hearing and have the right not to participate in the Hearing, free from retaliation.
- If a Witness does not submit to questioning, as described below, the Hearing Panel cannot rely on any statements made by that Witness in reaching a Determination Regarding Responsibility, including any statement relayed by the absent Witness to a Witness or Party who testifies at the Hearing.
- Witnesses shall be subject to this Policy's [Rules of Decorum](#) and may be removed upon violation of those Rules.

#### **Hearing Procedures**

Any Hearing conducted under this Resolution Process will follow the procedure below:

- The Panel Chair will open and establish rules and expectations for the Hearing.
- The Parties will each be given the opportunity to provide opening statements.
- Panel members will ask questions of the Parties and Witnesses.
- Parties or their Advisors, as applicable, will be given the opportunity to ask questions of the other Party and Witnesses after the Panel members conduct their initial round of questioning.
- During the Parties' questioning, the Panel Chair will have the authority to pause at any time for the established [Rules of Decorum](#).
- Should a Party or the Party's Advisor choose not to question the other Party or any Witness, that Party shall affirmatively waive their right to questioning through a written or oral statement to the Panel Chair.

#### **Questioning Procedure**

The questioning procedure may differ according to the allegations presented at the Hearing.

#### *Procedure #1*

At a Hearing convened to resolve allegations of "Title IX Sexual Harassment," as defined above in this Policy, each Party's Advisor will conduct questioning of the other Party or Parties and Witnesses. During this questioning, the Advisor may ask the other Party or Parties and Witnesses

relevant questions and follow-up questions, including those that challenge credibility directly, orally, and in real time. Parties are not permitted to ask questions of the other Party or Witnesses in Hearings convened under this Procedure #1.

Before any question is answered, the Panel Chair will determine if the question is relevant. The Panel Chair retains the discretion to determine what constitutes a “relevant” question. For example, questions that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.

If a Party or Witness declines to attend a hearing, or attends but declines to submit to questioning by the other Party’s advisor, the Hearing Panel may rely on statements of the non-appearing party or witness in reaching determination of responsibility, after assessing the relevance of each statement and weighing the reliability of each statement against the fact that the statement was not further tested through questioning at the hearing. The Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party or witness’s absence from the hearing or failure to answer questions.

#### *Procedure #2*

For all other Hearings, Parties, and not their Advisors, must conduct any questioning of Witnesses. With respect to questioning of the other party, the Panel Chair will conduct the questioning based upon written questions submitted by the Party. The Panel Chair will only ask the written questions submitted by the other party if they determine, in their discretion, that the question is deemed “relevant.” Irrelevant questions will not be asked at the Hearing.

#### **Hearing Recording & Transcript**

All Hearings will be recorded, and a transcript will be available to the Parties for inspection and review. Requests to review the recording and/or transcript must be made in writing to the Title IX Coordinator. Prior to obtaining access to a Hearing transcript, the Parties and their Advisors must sign an Agreement not to disseminate any of the testimony heard or evidence obtained in the Hearing or use such testimony or evidence for any purpose unrelated to the Resolution Process. Once signed, this Agreement may not be withdrawn. Hearing transcripts will be available within 7 business days of the conclusion of the Hearing unless there are extenuating circumstances.

#### **Determination Regarding Responsibility**

##### **Standard of Proof**

The College will use a “preponderance of the evidence” standard in deriving conclusions for its Determination Regarding Responsibility for Formal Complaints brought under this Policy. This standard means that the facts uncovered during the Investigation and Hearing determine whether it is more likely than not that a violation of the Policy occurred.

## **Considerations for Evaluating Testimony and Evidence**

Determinations Regarding Responsibility for an allegation of Sexual Misconduct may be based in part, or entirely, on documentary, oral, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Panel Chair.

Hearing Panel members shall not draw inferences regarding a Party's or Witness' credibility based on the Party's or Witness' status as a Complainant, Respondent, or Witness, nor shall they base their judgments in stereotypes about how a Party or Witness would or should act under the circumstances.

Generally, credibility judgments will rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and the reliability of the testimony considering corroborating or conflicting testimony or evidence.

Conversely, credibility judgments will not rest on whether a Party's or Witness' testimony is non-linear or incomplete, or if the Party or Witness is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a Witness' testimony regarding third-party knowledge of the facts at issue will be permitted, but generally will be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Parties may call "expert witnesses." While the expert witness will be permitted to testify and be questioned, the Hearing Panel will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight than testimony of fact witnesses, regardless of whether the expert witness testimony is the subject of questioning and regardless of whether both Parties present experts as Witnesses.

Parties may call character witnesses to speak on their behalf. While the character witness may testify and be questioned, the Hearing Panel will be instructed to afford very low weight to any non-factual character testimony of any Witness.

Where a Party's or Witness' conduct or statements demonstrate that the Party or Witness is engaging in retaliatory conduct, including but not limited to Witness tampering and intimidation, the Hearing Panel may draw an adverse inference as to that Party's or Witness' credibility.

## **Written Determination Regarding Responsibility**

The written Determination Regarding Responsibility ("the Determination") will be issued simultaneously to all Parties through their College email account, or other reasonable means, as necessary. The Determination will include:

1. Summary of the allegations of Sexual Misconduct.
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 Hearings held.
3. Findings of fact supporting the Determination.
4. Conclusions regarding which section of the Sexual Misconduct Policy, if any, the Respondent has or has not been found to have violated.
5. For each allegation:
  - a. A statement of, and rationale for, the Determination Regarding Responsibility.
  - b. A statement of, and rationale for, any disciplinary sanctions the College imposes on the Respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the College's Education Program or Activity will be provided to the Complainant; and
6. The College's procedures and the permitted reasons for the Complainant and Respondent to appeal the Determination (described below in "Appeal").

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the Determination Regarding Responsibility will be issued by the College within ten (10) business days of the completion of the Hearing.

The Determination becomes final either on the date that the College provides the Parties with the result of any Appeal, if such Appeal is filed consistent with the procedures and timeline outlined in "Appeals," below, or if an Appeal is not filed, the date on which the opportunity to file an Appeal expires.

### **Sanctions**

When a Respondent accepts or is found responsible for violating this Sexual Misconduct Policy, factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature of, severity of, and circumstances surrounding the violation(s)
- The Respondent's conduct history
- Previous allegations against or allegations involving similar conduct by the Respondent
- The impact on the Parties
- Any other information deemed relevant by the Hearing Panel

The sanctions will be implemented as soon as feasible, either upon the outcome of any Appeal or the expiration of the Appeal window. Possible sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

The following sanctions may be imposed upon any member of the College community found to have violated the Sexual Misconduct Policy:

- Permanent separation
- Time-limited separation
- Deferred separation
- Performance improvement plan
- Loss of campus housing or other privileges
- Removal from organization, team and/or committee
- Revocation of leadership or supervisory position
- Disciplinary probation
- Community service or other work assignments
- Writing assignment
- External program attendance or facilitation
- Warning – Written or oral
- Permanent or Time-limited Revocation of degree
- Withholding of diploma and/or transcripts
- Prohibition from participation in Commencement and/or Senior Week activities
- Other case-specific limitations on participation in the College's programs and activities

## Appeals

Each Party may appeal (1) the Dismissal of a Formal Complaint or any included allegations and/or (2) a Determination Regarding Responsibility. A Party must submit a written Appeal within five (5) business days of being notified of the Dismissal of a Formal Complaint or Determination Regarding Responsibility, indicating the grounds for the Appeal.

The grounds for Appeal are limited to:

- Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the College's own procedures).
- New evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal was made, that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual Party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.

The submission of an Appeal stays any sanctions for the pendency of the Appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the Appeal.

If a Party appeals, the College will as soon as practicable notify the other Party in writing of the Appeal; however, the time for Appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an Appeal.

Appeals should be submitted in electronic form to the Dean of the College (of the campus on which the hearing was held). The Dean will convene an Appeal Panel of three (3) trained faculty or staff members who were not previously involved in the reporting, investigation, or hearing process. The Appeal Panel will objectively consider all relevant evidence to either uphold, reverse, or modify the decision at issue.

The outcome of an Appeal will be provided in writing simultaneously to both Parties and will include the rationale for the decision. The Appeal decision is final, and no subsequent Appeals are permitted.

## **Retaliation**

The College will keep the identity of any individual who has made a report or complaint of Sexual Misconduct confidential, including the identity of any individual who has made a report or filed a Formal Complaint of Sexual Harassment under this Sexual Misconduct Policy, any Complainant, any individual who has been reported to be the perpetrator of Sexual Misconduct under this Policy, any Respondent, and any Witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR Part 106, including the conduct of any Investigation, Hearing, or judicial proceeding under this Sexual Misconduct Policy.

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

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

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve Sexual Misconduct under this Policy, but that arise from the same facts or circumstances as a report or complaint of Sexual Misconduct under this Policy.

## **Record Retention**

The College shall retain for a period of seven years after the date of case closure: the official file relating to a formal resolution, including any Investigation, Hearing, Determination Regarding Responsibility, sanctioning, and/or Appeal processes involving allegations of Sexual Misconduct. In cases in which a Respondent was found to have violated the Policy and was separated from the College, the College may retain such official case files indefinitely.