Sexual Misconduct Policy

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Table of Contents

Introduction 1
- Title IX 1
- U.S. Department of Education Regulations 1
- Bi-College Policy Development 1

Sexual Misconduct Policy 2
- General Rules of Application 4
  - Non-Discrimination in Application 5
  - Alcohol and Drug Use Amnesty 5
- Policy Definitions 6
  - Advisor 6
  - Complainant 6
  - Confidential Resource 6
  - Consent 6
  - Education Program or Activity 7
  - Formal Complaint 7
  - Hearing Panel 8
  - Investigator 8
  - Privacy 8
  - Resolution Process 8
  - Respondent 8

Reporting Sexual Misconduct to the College 8
- Anonymous Reports 9
- Title IX Coordinator 9
- Support and Resources 10
  - Supportive Measures 10
  - Supportive Resources 11
    - On-Campus Resources 11
    - Regional Resources 11
    - National Resources 12
- Emergency Removal 13
- Administrative Leave 13

Resolution Process 13
- Filing a Formal Complaint 13
  - Multi-Party or Multi-Allegation Situations 14
  - Determining Jurisdiction and Mandatory Title IX Dismissal 14
  - Discretionary Dismissal of Complaint 14

Notice of Dismissal 15
Withdrawal or Resignation While Charges are Pending 15
Notice of Allegations 15
Advisors 16
Alternative Resolution 16
Confidentiality 17
Alternative Resolution Options 17
Administrative Resolution 17
Facilitated Resolution 18
Formal Resolution Process 18
Notice of Meetings and Interviews 18
Request for Delay 18
Investigation 19
General Rules of Investigations 19
Ongoing Notice 19
Review of Evidence 19
Investigative Report; Relevance 20
Hearing 21
General Rules of Hearings 21
Continuances or Granting Extensions 21
Participants in the Hearing 21
Hearing Procedures 22
Questioning Procedure 23
Hearing Recording & Transcript 23
Determination Regarding Responsibility 24
Standard of Proof 24
Considerations for Evaluating Testimony and Evidence 24
Written Determination Regarding Responsibility 24
Timeline of Determination Regarding Responsibility 24
Sanctions 25
Appeals 25
Retaliation 26
Appendix I: Rules of Decorum for Resolution Process Hearings 29
Acknowledgement 32

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Introduction

Title IX

Title IX of the Educational Amendments of 1972 ("Title IX") prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a person's ability to equally access educational programs and opportunities.

U.S. Department of Education Regulations

Effective August 1, 2020, the U.S. Department of Education issued regulations under Title IX that:

- Define the meaning of "sexual harassment" (including forms of sex-based violence),
- Address how an institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandate a grievance process that an institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Those regulations were briefly superseded by regulations which were effective August 1, 2024, and effectuated through a Sex Discrimination and Sex-Based Harassment Policy. However, those regulations were vacated by a federal court on January 9, 2025, and this Sexual Misconduct Policy (the "Policy") was reinstated effective January 21, 2025. The Sex Discrimination and Sex-Based Harassment is no longer in effect, as it was superseded by the reinstatement of this Sexual Misconduct Policy.

Bryn Mawr College ("Bryn Mawr" or the "College") has revised its policies pertaining to sex discrimination on several occasions. Final decisions regarding which policy and procedures will apply in any specific case are made by the Title IX Coordinator in their discretion and under applicable law and/or regulation, and are not appealable.

Bi-College Policy Development

Bryn Mawr and Haverford Colleges ("the Colleges") have a long-standing collaborative relationship which offers students comprehensive access to academics, student organizations, and dining facilities and social activities on both campuses. A free "Blue Bus" shuttle service makes regular stops at each campus, providing easy and frequent access to all community members. Some academic programs and departments are provided only on one campus or structured to share resources between the two institutions. In 2016, the Colleges codified the Bi-College ("Bi-Co") relationship with a Memorandum of Understanding to provide a formalized framework for ongoing collaboration. Due to the complexity

of the Title IX requirements and the sometimes overlapping nature of the Colleges' Education Program and Activities, Bryn Mawr and Haverford Colleges implement Sexual Misconduct Policies which are substantially the same. The Colleges administer the procedures set forth in the Resolution Process of these Policies, as mutually agreed by the Colleges, if a Complainant is a student or employee of one College and the Respondent is a student or employee of the other College, if the Complainant is a student or employee of one College and the location of the alleged Sexual Misconduct is the other College, or if other facts and circumstances set forth in a Formal Complaint or in the investigation of such Formal Complaint suggest the need for joint administration of the Resolution Process.

Sexual Misconduct Policy

Bryn Mawr College is committed to ensuring that all members of the College community have a learning and working environment that is free from sexual misconduct. For purposes of this policy, the College defines **Sexual Misconduct** as acts described in one or both of the following broad categories:

1. **"Title IX Sexual Harassment,"** in accordance with U.S. Department of Education regulations, includes any conduct on the basis of sex that is alleged to have occurred in a College Education Program or Activity, and is alleged to have been perpetrated against a person in the United States. The conduct alleged, if true, must satisfy one or more of the following conditions:

    a. A College employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

    b. Unwelcome conduct a reasonable person would determine to be so severe, pervasive, and objectively offensive such that it effectively denies a person equal access to the College's Programs or Activities;

    c. **Sexual Assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (such as incapacitation, age, family relation to the other party, or intellectual or other disability). Sexual Assault can be committed by or against individuals of any sex or gender and can occur between individuals of the same sex/gender or different sexes/genders. As required by Title IX regulations, the College will rely on the following definitions of Sexual Assault:

        i. sexual intercourse with another person, including oral or anal sexual intercourse, or the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

ii. 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 their age or because of their temporary or permanent mental or physical incapacity;

iii. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

iv. sexual intercourse with a person who is under the statutory age of consent.

d. **Dating Violence**, as defined in 34 U.S.C. § 12291(a)(1)), meaning any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

e. **Domestic Violence**, as defined in 34 U.S.C. § 12291(a)(8), meaning a felony or misdemeanor crime 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 the jurisdiction receiving grant monies, 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 the jurisdiction.

f. **Stalking**, as defined in 34 U.S.C. 12291(a)(30), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress**.**

2. **"Other Gender-Based Misconduct,**" defined as acts which do not meet the narrow definition of "Title IX Sexual Harassment," as defined above, but nevertheless could constitute discrimination on the basis of sex. Other Gender-Based Misconduct, which is alleged to have occurred by or against any member of the College community, regardless of the location of the alleged action, includes:

a. Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined in 1c, d, e, and f (above).

b. Subjecting an individual or group to an adverse action, including differential treatment, based on sex as defined under either federal or state law, including sex, pregnancy and related conditions, sex assigned at birth, gender, gender identity, gender expression, affectional or sexual orientation, differences in sex development, variations of sex characteristics or other intersex characteristics.

c. Unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or nonverbal conduct of a sexual nature that is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

d. Sexual exploitation, defined as occurring when a person abuses or exploits another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose without that person's consent. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

- observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity in a place where that person would have a reasonable expectation of privacy, without that person's consent;
- recording, and/or distributing (including streaming) of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without that person's consent;
- forcing or coercing a person to engage in sexual activity for money or other renumeration;
- exposing one's genitals in non-consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

General Rules of Application

This Policy is intended to meet the College's obligations under Title IX; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), with respect to its application to sex-based misconduct; and other applicable law and regulations.

Consistent with Title IX requirements, Bryn Mawr does not discriminate on the basis of sex in its Education Programs or Activities (including in admissions and employment). College community members have the right to be free from all forms of sexual harassment and violence. All College community members are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College has zero tolerance for sexual misconduct, and this Policy applies to all

employees and students. Non-members of the campus community who engage in discriminatory actions within College programs or on College property are not under the jurisdiction of this policy but can be subject to actions that limit their access and/or involvement with College programs as the result of their misconduct.

Reports of Sexual Misconduct committed by any student or employee (including faculty and staff) of the Bryn Mawr community will be resolved according to the procedures outlined in this Policy, unless otherwise noted.

Non-Discrimination in Application

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about this Policy or processes set forth herein may contact the Department of Education's Office for Civil Rights using contact information available at https://ocrcas.ed.gov/contact-ocr.

Accommodations for Otherwise Qualified Individuals with Disabilities

This Policy does not alter the College's obligation to provide access by way of reasonable accommodations to Otherwise Qualified Individuals with Disabilities under federal disability laws including the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. Individuals may inquire with the Access Services Office to request accommodations. Approved accommodations must be deemed reasonable and not create fundamental alterations to the Resolution Process or create undue burdens. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Party, even when the Party may be receiving accommodations in other College programs and activities.

Alcohol and Drug Use Amnesty

The health and safety of every student is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of Sexual Misconduct. An individual who experiences Sexual Misconduct, or a Witness to such Sexual Misconduct, acting in good faith, who discloses any incident of Sexual Misconduct to College officials or law enforcement will not be sanctioned under College codes of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of Sexual Misconduct. The College may request that the individual attend an approved alcohol or drug education program, without assessing any charges for such program. This amnesty provision also applies to student groups making a report of Sexual Misconduct. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

Policy Definitions

Advisor

An Advisor is any individual who has been chosen by a Party or designated by the College to provide support and guidance during the resolution process. The specific role of the Advisor is explained under the Resolution Process section of the Policy.

Complainant

A Complainant is any individual who has reported being or is alleged to be the victim of conduct that could constitute Sexual Misconduct as defined under this Policy.

Confidential Resource

A Confidential Resource is a College employee who is not required to report notice of sexual harassment to the Title IX Coordinator. References made to *confidentiality* refer to the ability of identified Confidential Resources to not report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. Lists of Confidential Resources are available on the Bryn Mawr College webpage.

Consent

Consent to engage in sexual activity must be informed, knowing and voluntary; consent must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Consent is active, not passive.

Guidance for Consent:

- Prior to initiating a sexual encounter, one is expected to obtain consent to each act of sexual activity prior to initiating such activity. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

- If at any time during sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify verbally the other's willingness to continue before continuing such activity.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in each sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual contact.
- An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent.
- In the Commonwealth of Pennsylvania, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16 if the other party is less than four (4) years older than the minor.

Education Program or Activity

Includes locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the alleged conduct occurred, including:

- Any Bryn Mawr College on-campus premises
- Buildings or property owned or controlled by a recognized student organization.
- Any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of College programs and activities over which the College has substantial control.

Formal Complaint

A Formal Complaint is a document – including an electronic submission—filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or a document signed by the Title IX Coordinator, alleging Sexual Misconduct against a Respondent within the College's Education Program or Activity and requesting initiation of the College's Resolution procedures consistent with this Sexual Misconduct Policy to investigate the allegation of Sexual Misconduct.

Hearing Panel

The Hearing Panel is the group of individuals appointed by the College with authority to determine responsibility and sanctioning (if applicable) for violation of this Sexual Misconduct Policy.

Investigator

The Investigator is the individual or individuals appointed by the College to gather evidence and facts related to the allegation of Sexual Misconduct. The Investigator(s) will provide an investigative report summarizing all relevant evidence for review by both the Complainant and Respondent.

Privacy

References made to privacy mean the actions of College employees, who cannot guarantee confidentiality, to maintain privacy to the greatest extent possible. Information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The College will limit disclosure as much as practicable, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the Bryn Mawr College FERPA Policy. Employee privacy will be protected in accordance with the Bryn Mawr Faculty and Staff Handbooks.

The Resolution Process is a formal resolution process to address reported conduct that may be a violation of this Sexual Misconduct Policy.

Respondent

A Respondent is any individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct as defined under this Policy.

Reporting Sexual Misconduct to the College

Any person may report Sexual Misconduct in person, by video conference, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) via the Bryn Mawr Online Reporting Form, or by mail to the office address listed for the Title IX Coordinator. Please note that the Bryn Mawr Online Reporting Form is not continuously monitored, and reports will be reviewed the next business day. Any individual requiring immediate assistance should contact Campus Safety, which is

open 24/7, located in the John J. Maloney Memorial Building, and can be reached at (610) 526-7911. The Online Reporting Form will provide a link to this Policy, as well as encourage individuals to review this Policy for more information about procedures and resources.

Individuals who report Sexual Misconduct in Pennsylvania will also be informed of their rights as a victim of crime under Pennsylvania law.

Once an individual provides a report of Sexual Misconduct, the report will be reviewed by the Title IX Coordinator. At this stage, the Title IX Coordinator will have access to the report, and they will share the information on a limited basis as required to take the appropriate next steps. Using the information provided (e.g., through the Online Reporting Form), the College will promptly contact the Complainant to discuss appropriate Supportive Measures and to explain the process for filing a Formal Complaint and that Supportive Measures are available with or without the filing of a Formal Complaint. Complainants are not required to respond to outreach from the College and the College will respect this decision, with limited exceptions where it is obligated by law or to act in the safety interest of the community.

Only individuals authorized by the College may enter, update, access, share, or disseminate the electronic data collected, created, or maintained from the Online Reporting Form.

Anonymous Reports

An individual may make a report of Sexual Misconduct to the Title IX Coordinator, and if preferred, may do so without disclosing one's name using the online reporting form listed above and here:

Bryn Mawr Online Reporting Form

Depending on the level of information available about the incident or the individuals involved, the College's ability to respond to an anonymous report may be limited. The College will, however, take whatever steps it deems appropriate and in the best interest of the overall College community, consistent with the information available. The College will never refuse to respond on the grounds that a report was made anonymously.

Information collected through the anonymous reporting line will be shared only with necessary College officials in order to respond to the reported concern. Information is kept private and no personally identifiable information is shared, except as necessary to follow this Policy, without the reporting party's consent.

Title IX Coordinator

The Title IX Coordinator provides supervision and management of the College's efforts to address and resolve incidents of Sexual Misconduct. Bryn Mawr College's Interim Title IX Coordinator is:

Kim Pacelli
Interim Title IX Coordinator
kim.pacelli@tngconsulting.com
titleix_coordinator@brynmawr.edu
(610) 526-7863

At Bryn Mawr College, the Title IX Coordinator has reporting responsibilities to:

Tomiko Jenkins
Dean of Student Life
tjenkins@brynmawr.edu
(610) 526-5377

Support and Resources

Supportive Measures

Supportive Measures are non-disciplinary, non-punitive, and individualized services that the College offers and may put in place, without fee or charge, after receiving notice of possible violations of this Policy. Supportive Measures are designed to restore or preserve access to the College's Education Program and Activity, protect the safety of all Parties and the College's educational environment, and/or deter Sexual Misconduct, while not being punitive in nature or unreasonably burdening any Party.

Both Complainants and Respondents have the right to receive Supportive Measures from the College regardless of whether a Formal Complaint has been filed. The Title IX Coordinator will contact a Complainant after receiving notice of possible violation of this Policy (1) to discuss the availability of Supportive Measures and (2) to explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment. The Title IX Coordinator will consider the Complainant's wishes with respect to implementation of Supportive Measures.

To determine the appropriate Supportive Measure(s) to be implemented, the College will conduct an individualized assessment based on the unique facts and circumstances of a situation. Whether a possible Supportive Measure would unreasonably burden the other Party is a fact-specific determination made by the College in its discretion that takes into account the nature of the Education Program and Activity, opportunities and benefits in which an individual is participating.

Examples of Supportive Measures may include, as appropriate and as reasonably available:

- referral to counseling or medical services
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the Parties (no contact orders)
- changes in work or housing locations

- leaves of absence
- increased security and monitoring of certain areas of the campus

Supportive Measures will remain private to the extent possible, but may be disclosed where necessary to implement the Supportive Measure. Some College officials will be notified of Supportive Measures as needed for implementation.

The Title IX Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures.

Supportive Resources

On-Campus Resources

A full list of on-and off-campus resources can be found on the Bryn Mawr College website.

The following staff in offices with an asterisk (*) are confidential: Physicians, nurses, nurse practitioners, mental health providers, and social workers will keep, as confidential, all disclosures made in the course of treatment. Office staff are *not* confidential but will maintain privacy.

- Health and Wellness Center* (medical care and counseling options)
  - 610-526-7380
  - 610-526-7778 (after hours)

- College Chaplain*
  - nwoods@brynmawr.edu
  - 610-526-6952

- Campus Safety
  - 610-526-7911 or 7911 (campus)
  - (911 off campus)

Regional Resources

The organizations we have a Memorandum of Understanding with (in compliance with PA Act 55) have an asterisk (*).

- **Lower Merion Township Police**
  610-642-4200

- **Victims Services Center of Montgomery County***
  888-521-0983
  www.victimservicescenter.org

- **Laurel House***

1-800-642-3150 or text “HOPE” to 85511
www.laurel-house.org

- **Delaware County Victim Assistance Center**
  610-566-4342
  www.delcovictimassistance.org

- **The Crime Victims’ Center of Chester County**
  610-692-7273
  www.cvcofcc.org

- **The Women’s Center of Montgomery County**
  1-800-773-2424
  https://wcmontco.org/

- **Network of Victim Assistance (Bucks County)**
  1-800-675-6900
  www.novabucks.org

- **Berks Women in Crisis (Berks County)**
  610-372-9540
  www.berkswomenincrisis.org

- **Women Against Abuse (Philadelphia)**
  866-723-3014
  www.womenagainstabuse.org

- **Women Organized Against Rape (Philadelphia)**
  215-985-3333
  www.woar.org

National Resources

- **RAINN (Rape, Abuse & Incest National Network)**
  800-656-HOPE (4673)

  Online chat:
  - English: online.rainn.org
  - Español: rain.org/es

  www.rainn.org/

- **National Sexual Violence Resource Center**
  www.nsvrc.org/

Emergency Removal

The College may remove a Respondent from the College's Education Program or Activity on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct justifies a removal.

If a College official determines such removal is necessary, the Respondent will be provided notice and an opportunity to appeal the decision immediately following the removal.

Administrative Leave

The College retains the authority to place a non-student employee Respondent on administrative leave during the pendency of the Resolution Process, consistent with the Bryn Mawr Faculty and Staff Handbooks. An employee will not be placed on administrative leave unless and until a Formal Complaint of Sexual Misconduct has been filed with the College.

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, including allegations of other forms of discrimination and harassment based upon other protected characteristics, 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. It the alleged conduct does not fit the definition of Title IX Sexual Harassment, or the Complainant is not participating, or attempting to participate, in the College's Education Programs and Activities at the time the Formal Complaint is filed, 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 the definition of Title IX Sexual Harassment or Other Gender-Based Misconduct, 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 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 Bryn Mawr 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, at the College's discretion. 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 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 Department of Education regulations, Advisors shall not participate directly in the Resolution 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; 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 there are allegations of pattern behavior by the Respondent, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Alternative Resolution is not 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, such as with a parent, friend, advisor, or other source of emotional support. 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. 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 may 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 permit a Facilitated Resolution 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

Either Party may request a 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 Undergraduate 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 any pauses in the Process. Extensions requested after a deadline has run, rather than before the deadline has occurred, are unlikely 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 are prohibited from disseminating any of the evidence subject to inspection and review or using such evidence for any purpose unrelated to the Resolution Process. Failure to comply with this requirement may result in disciplinary or other action.

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

Investigative Report; Relevance

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.

Evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence regarding a Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent. Such evidence is commonly referred to as prohibited by "rape shield."

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.
- If a Party 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 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's absence from the hearing or failure to answer questions.
- Advisors shall be subject to this Policy's Rules of Decorum and may be removed at 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, one of whom is a Panel Chair and two of whom are 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 any of the Parties to the case.
- The Hearing Panel will be trained on topics including the definitions of sexual harassment and misconduct under this Policy, the scope of the College's Education Programs and Activities, how to conduct a hearing, how to serve impartially including by avoiding prejudgment of the facts at issue, issues of relevance including how to apply the "rape shield" protections provided for Complainants, conflicts of interest, bias, 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 within 24 hours of being informed of the Hearing Panel members' identities.

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, in cases involving allegations of Title IX Sexual Harassment**,** the College will select an Advisor to serve in this role at the Hearing at no fee or charge to the Party**,** for the purpose of conducting cross examination in accordance with Questioning Procedure #1.
- 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.
- 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 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 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 witness's absence from the hearing or failure to answer questions.
- 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.

Questioning Procedure

The questioning procedure will 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, verbally, 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.

Procedure #2

For all other Hearings, the Panel Chair will conduct any questioning of Parties and Witnesses. The Parties may submit written questions to the Panel Chair, who 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.

Questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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, verbal, 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.

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.

Dissatisfaction with the outcome is not a valid basis for appeal. In addition, appeals are not intended to be a rehearing of the matter. The scope of the appeal is limited to the grounds for appeal included in the written appeal submissions.

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

Appeals should be submitted in electronic form to the Dean of Student Life. The Dean of Student Life, or designee, will review the appeal to ensure it is properly filed in accordance with this Policy. Properly filed appeals will then be submitted to the Dean of the Undergraduate College. 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.

The Dean of the Undergraduate College, or designee, will not have been previously involved in the reporting, investigation, or hearing process, and will objectively consider the hearing record and information presented in the appeal and either uphold, reverse, or modify the decision at issue, including, where appropriate, remanding the matter with instructions to conduct additional investigative steps and/or reconvene the Hearing Panel in order to cure a procedural error, interview and/or call (a) witness(es), consider newly discovered evidence, and/or reassess information not previously considered. This list of possible actions on remand is non-exhaustive.

The outcome of an Appeal will be provided in writing simultaneously to both Parties within fifteen (15) business days from when all written appeal submissions were received, and will include the rationale for the decision. This time period may be extended for good cause. 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 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.

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Appendix I: Rules of Decorum for Resolution Process Hearings

Purpose of the Rules of Decorum

Title IX Hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education ("the Department"), writing about Title IX regulations, advised that it "purposefully designed th[e] final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or Hearing Panel Chair from questioning witnesses in an abusive, intimidating, or disrespectful manner." 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions "are in a better position than the Department to craft rules of decorum best suited to their educational environment" and build a hearing process that will reassure the Parties that the institution "is not throwing a party to the proverbial wolves." *Id*.

To achieve this purpose, Colleges may provide for reasonable rules of order and decorum, which may be enforced through the removal of an Advisor who refuses to comply with the rules. *Id*., at 30320. As the Department explains, the removal process "incentivizes a party to work with an advisor of choice in a manner that complies with a recipient's rules that govern the conduct of a hearing and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants." *Id*.

At base, these Rules of Decorum require that all Parties, Advisors, and College staff treat others who are engaged in the process with respect.

The Rules of Decorum and processes set forth herein apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum

The following Rules of Decorum ("the Rules") are to be observed in the Hearing and applied equally to the Parties (meaning the Complainant and Respondent) and Advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and Advisors will refer to other Parties, Witnesses, Advisors, and College staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No Party may act abusively or disrespectfully during the Hearing toward any other Party or to Witnesses, Advisors, or Hearing Panel members.
4. The Advisor may not yell, scream, badger, or physically "lean in" to a Party or Witness' personal space. Advisors may not approach the other Party or Witnesses without obtaining permission from the Hearing Panel Chair.
5. The Advisor may not use profanity or make *ad hominem* attacks upon a Party or Witness. Questions must be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.

6. The Advisor may not ask repetitive questions. When the Hearing Panel Chair determines a question has been "asked and answered" or is otherwise not relevant, the Advisor must move on.
7. Parties and Advisors may take no action at the Hearing that a reasonable person in the shoes of the affected Party would see as intended to intimidate that person (whether Party, Witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The Hearing Panel Chair shall have sole discretion to determine if the Rules have been violated. The Chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Panel Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Chair removes a Party's Advisor, the Party may choose a different Advisor, or (in cases involving Title IX Sexual Harassment) accept an Advisor provided by the College for the limited purpose of questioning at the Hearing. Reasonable delays, including temporary adjournment of the Hearing, may be anticipated should an Advisor be removed. A Party cannot serve as their own Advisor in this circumstance.

The Hearing Panel Chair shall document any decision to remove an Advisor in the Determination Regarding Responsibility.

For flagrant, multiple, or continual violations of the Rules, in one or more proceedings, Advisors may be prohibited from participating in future proceedings at the College in the Advisor role, on a temporary or permanent basis. Evidence of violation(s) of the Rules will be gathered by the Title IX Coordinator and presented to the Dean of the Undergraduate College for proceedings involving students or to the Director of Human Resources for cases involving employees. The Advisor in question may provide an explanation or alternative evidence in writing to appeal the prohibition from participation. This appeal must be submitted to the appropriate Dean or Director within five (5) calendar days of receipt. There shall be no right to a hearing, verbal testimony, or questioning.

The Dean of the Undergraduate College or Director of Human Resources shall consider the evidence, using a preponderance of the evidence standard, and issue a finding in writing regarding removal. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days, unless extended for good cause. There is no appeal of this finding.

Relevant Questions Asked in Violation of the Rules of Decorum

Should an Advisor ask a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the Witness' or Party's personal space, the question will not be deemed irrelevant by the Hearing Panel Chair simply because of the manner in which it was delivered. Under that circumstance, the Hearing Panel Chair will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules).

Acknowledgement

Policy adapted from the *Model Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations* provided by:

SUNY Student Conduct Institute
The State University of New York
State University Plaza
Albany, NY 12246

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