

Effective Date: 08/26/2020

# **Equity Resolution Procedures for Allegations of Discrimination, Harassment and Sexual Misconduct**

This Equity Resolution Policy and Process model is adapted for use by Mitchell Community recipient to ensure compliance with Title IX AND all civil rights laws that protect faculty, students and employees from unlawful discrimination, harassment, and sexual misconduct.

These procedures cover a broad range of behaviors that will not be tolerated in the Mitchell Community.

Use and Adaptation of this model is made with citation to the  
National Center for Higher Education Risk Management  
and is permitted through a license to  
MITCHELL COMMUNITY COLLEGE.

All Other Rights Reserved.  
©2016. THE NCHERM GROUP, LLC/ATIXA

*As a recipient of Federal funds, Mitchell Community recipient is required to comply with Title IX of the Higher Education Amendments of 1972 ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities.*

# TABLE OF CONTENTS

## **PART A - The Equity Resolution Process**

Overview	4
Civil Rights Protections and the Equity Resolution Process	5
Jurisdiction	6
Resources	7
Definitions	8
Reporting - General	14
Scope	15
Nondiscrimination	15
Accommodation of Disabilities	16
Discriminatory Harassment	17
Protected Class Discrimination	21
Retaliation	22
Immediate Remedial Action	22
Reporting Offenses	23
Federal Timely Warning Obligations	24
False Allegations	24
Amnesty for Reporting Party and Witnesses	24
Parental Notification	25
Federal Statistical Reporting Obligations	25

## **PART B - Equity Resolution Process - Administrative Guidelines**

Overview	27
Reporting Misconduct	28
Preliminary Inquiry	28
Interim Remedies and Actions	29
Investigation	30
Witnesses	31
Advisors	31
Conflict Resolution and Informal Resolution	33
Formal Hearing Panel Procedures	35
Disabilities Accommodation in the Equity Resolution Process	44
Revision	44

# **PART A**

## **Overview, Definitions and Scope**

## Overview

These Equity Resolution Procedures (ERP) incorporate and supersede resolution processes of the College's Gender-based Sexual Harassment and Sexual Misconduct Procedures. These procedures cover a broad range of behaviors that will not be tolerated in the Mitchell community. Any behavior deemed to constitute any type of discrimination, harassment or sexual misconduct will subject an individual to appropriate disciplinary and/or criminal actions.

The ERP is designed, developed and implemented to meet or exceed the Department of Education's Office of Civil Rights expectation that higher education institutions adopt policies that have "consistency across processes" for reporting, investigating and resolving civil rights complaints related to discrimination, harassment and sexual misconduct. These procedures are Title IX compliant and offer guidelines and resources for the reporting, investigating and resolving of all civil rights claims.

Faculty, Students and Employees can use these procedures to:

1. Make a civil rights complaint to the College
2. Have their complaint investigated expeditiously
3. Gain resolution regarding their complaint

College policies related to civil rights protections include:

1. [AD 02.16 Title IX](#)
2. [HR 05.01 Equal Opportunity and Nondiscrimination Policy](#)
3. [HR 05.19 Anti Harassment Policy](#)
4. [ADA Grievance Procedure in the Student Handbook on Page 12](#)

**It is important to note that these Equity Resolution Procedures do not apply to non-civil rights complaints.** For resolution of concerns not covered by these ERP procedures, please refer to the following:

1. [Student Handbook](#) see Student Rights, Responsibilities, Code of Conduct and Judicial Procedures
2. [Employee Grievance and Due Process Policy HR 05.15](#)
3. [Employee Grievance and Due Process Procedures HR 05.15.](#)

## Civil Rights Protections and the Equity Resolution Process

The College's Director of Human Resources also serves as the College's Title IX Coordinator and Equal Opportunity Officer, responsible for the administration and implementation of the College's policies on equal opportunity, discrimination, harassment and sexual misconduct. These policies protect the civil rights of all faculty, students and staff. The Title IX Coordinator works with other key College staff in the reporting, investigation and resolution of civil rights claims.

### **Training: Schedule and Materials**

The Title IX Coordinator is also responsible for prevention and awareness training, which includes training with respect to equal opportunity, discrimination, harassment and sexual misconduct, according to the following schedule:

- Students: Trained upon enrollment, annually thereafter
- Faculty and Staff: Within 30 days of hire, annually thereafter
- President and VPs: Annually/ongoing
- Board of Trustees: Annually/ongoing
- Responsible Employees: Annually/ongoing
- Investigators: Annually/ongoing
- ERP Pool Members: Annually/ongoing
- Hearing Panel Members: Annually/ongoing
- Title IX Coordinators: Annually/ongoing
- Deputy Coordinators: Annually/ongoing
- Safety / Security Officers: Annually/ongoing

**Institutional Training Materials** - available, viewable and downloadable to faculty, staff, students and the community. The materials may be found online at [www.mitchellcc.edu](http://www.mitchellcc.edu), or by request to the College's Title IX Coordinator, Paul Santos, at [psantos@mitchellcc.edu](mailto:psantos@mitchellcc.edu) or 704-978-5409.

**Proprietary Training Materials** - in-house or third-party training materials are listed by Title and Authorship only on the College's web site at [www.mitchellcc.edu](http://www.mitchellcc.edu). Anyone interested in viewing proprietary training materials may make a request to the Title IX Coordinator and be allowed to come to the College to review them. *Pursuant to 106.45 (b) (10) (D), all materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, are publicly available upon request for inspection by members of the public.*

Upon notice to the Title IX Coordinator, the ERP involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the College's Title IX, Equal Opportunity and Nondiscrimination, or Anti-Harassment Policy and Procedures have been violated. If so, the Title IX Coordinator will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair.

*It is important to note that these procedures also apply to claims separate from Title IX, meaning they are used in response to claims related to any protected class under applicable local, state or federal law.*

The investigation and the subsequent resolution process outlined in these procedures determines whether behavior and actions are found to be in violation of policy. If so, the College will promptly implement effective remedies designed to end the violation, prevent its recurrence and address its effects.

Please note that policies that address non-civil rights concerns will be investigated per their related procedures.

## Jurisdiction

Where and When are faculty, students and staff subject to these ERP Policy and Procedures?

Faculty, students and staff are subject to the ERP for behaviors and actions that take place at any location or property where the recipient is conducting programs or activities AND has substantial control of where the allegation occurred.

Where and When are faculty, students and staff NOT subject to these ERP Policy and Procedures?

The Recipient does not have jurisdiction - an obligation to respond - over allegations that have occurred at a house, bar, restaurant, party or other location OUTSIDE of where the Recipient conducts programs or activities.

*If it is determined that the alleged conduct affects a “substantial recipient interest”, the Recipient may investigate it under these or other appropriate procedures.*

An affect to a “substantial recipient interest” is defined to include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b. Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests of the College.
- e. Any on or off-campus discriminatory or harassing speech may be regulated by the Recipient only when such speech is made in an employee’s work or student’s learning environment and / or negatively impacts the College’s working or learning environments.
- f. Any online postings or other electronic communication by employees or students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the College’s control (e.g. not on Recipient networks, websites or between Recipient email accounts) will be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1<sup>st</sup> Amendment.

## Resources

### Title IX Coordinator

The Director of Human Resources serves as the College's Title IX Coordinator and oversees the implementation of the College's policies on equal opportunity, harassment and nondiscrimination. The Title IX Coordinator oversees the Deputy Title IX Coordinator and Title IX Investigators and acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the Recipient's President at (704) 878-3205. To raise concerns regarding a potential conflict of interest with any other administrator involved in the Equity Resolution Process, please contact the Title IX Coordinator at (704) 978-5409.

### Internal Resources:

Name: Paul Santos  
Director of Human Resources & Title IX Coordinator  
500 West Broad Street, Statesville, NC 28677  
(704) 978-5409  
email: [psantos@mitchellcc.edu](mailto:psantos@mitchellcc.edu)

Name: Dr. Porter Brannon  
Vice President for Student Services  
500 West Broad Street, Statesville, NC 28677  
(704) 878-3203  
email: [pbrannon@mitchellcc.edu](mailto:pbrannon@mitchellcc.edu)

Name: Ann Wright  
Deputy Title IX Coordinator  
500 West Broad Street, Statesville, NC 28677  
(704) 878-3295  
email: [asaunders@mitchellcc.edu](mailto:asaunders@mitchellcc.edu)

**Confidential Employee:**  
Myra Lewis, Director of Academic Advising  
Student Services Center, Suite 100  
(704) 978-1309  
email: [mlewis@mitchellcc.edu](mailto:mlewis@mitchellcc.edu)

### External Resources:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity  
Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

**Referral Services:** Students who have been victims of a sexual offense, who have substance abuse problems, are victims of domestic violence, or are experiencing other personal or relational problems which may require counseling or assistance, should speak to a Counselor in Student Services. Counselors may be able to assist you with your concerns or may refer you to an off-campus resource for assistance: Counseling Center on Statesville Campus - Student Services Center (Suite 103), phone (704) 878-3242. Counseling Center on Mooresville Campus - Lower Level of Building A, phone (704) 978-5415. Law Enforcement - please call 911.

## Definitions

### ADA/504 Coordinator

As a recipient of federal funds, Mitchell has a designated person to coordinate its efforts to comply with the Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (ADA). The College's ADA/504 Coordinator is Marks Elder.

#### Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA

1. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds.
2. Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability by public entities, regardless of whether they receive federal financial assistance. The regulations for Section 504 and Title II are enforced by the Department of Education's (DOE) Office for Civil Rights (OCR) and appear in the Code of Federal Regulations here: [Section 504](#) and [Title II of the ADA](#).
3. Section 504 and Title II of the ADA also prohibit employment discrimination; complainants may choose whether to pursue such complaints with the OCR (usually students) or with the [Equal Employment Opportunity Commission](#) (usually employees).

### Advisor

The parties to a Grievance are required to have an advisor at live hearings. The Recipient will provide to both the complainant and respondent(s) written notice of the allegations, an equal opportunity to select an advisor of the party's choice (who may be, but does not need to be, an attorney), and an equal opportunity to submit and review evidence throughout the investigation. The advisor should be knowledgeable of or have received training in the Recipient's Grievance and Cross-Examination procedures.

### Annual Security Report (ASR)

By October 1 of each year, the Recipient publishes and distributes its "[Clery Annual Security Report](#)" at [Consumer Information](#). The ASR report is required to provide crime statistics for the prior three years, policy statements regarding various safety and security measures, campus crime prevention program descriptions, and procedures to be followed in the investigation and prosecution of alleged sex offenses.

### Complainant

Formerly referred to as the "Reporting Party", person(s) that claim they have been subjected to a violation of any Recipient policy that protects their civil rights, specifically as relates to discrimination, harassment or sexual misconduct based upon any protected class they may be a member of, will now be referred to as "Complainants". If the Complainant is a student, they must be enrolled in or seeking to participate in any program offered by the Recipient. If the Complainant is a member or Faculty or Staff, they must be actively employed by the Recipient. A Complainant may also be a Mandatory Reporter or Official with Authority.



## **Clery Act**

A federal statute (law) that requires all recipients that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses. These statistics may be found in the Recipient's [Annual Security Report](#), or "ASR".

## **Consent**

Permission, or "Consent", is mandatory in every kind of sexual activity. Without consent, any sexual act is sexual misconduct. Consent may be withdrawn at any time before or during sexual activity. Consent requires an outward demonstration, through understandable words or actions, of a clear willingness to engage in sexual contact.

## **Confidential Employee**

An individual that will receive a report of discrimination, harassment or sexual misconduct and will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. The College's "confidential employee(s)" may be found on Page 5. These individual(s) are available to help students and employees during normal operating hours. Employees and students also have an option to contact the EAP confidentially by calling 800.633.3353 or visiting [www.mygroup.com](http://www.mygroup.com), using username: "mcc" and password: "guest".

*The Confidential Employee listed on Page 5 is obligated to submit ANONYMOUS statistical information for Clery Act purposes unless they believe it would be harmful to the complainant.*

## **Equity Resolution Pool**

The President, in consultation with the Title IX Coordinator, appoints the Equity Resolution Procedures Pool (ERP Pool), which reports to the Title IX Coordinator. Members of the ERP Pool are announced annually and can be found at [www.mitchellcc.edu](http://www.mitchellcc.edu).

Members of the ERP Pool can serve in any of the following roles, at the direction of the Title IX Coordinator:

- Reporting - provide sensitive intake for and initial advice pertaining to allegations
- Mediation - serve in a mediation or restorative justice role in conflict resolution
- Investigation - investigate allegations
- Advisor - act as process advisors to those involved in the Equity Resolution Process
- Hearing Panel Member - serve on hearing panels for allegations
- Appeals Panel Member - serve on appeal panels for allegations

ERP pool members are required to receive annual training organized by the Title IX Coordinator, including a review of Recipient policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the College's Equal Opportunity, Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

## **Equity Resolution Pool (continued)**

ERP Pool members should be representative of groups protected by the equal opportunity, discrimination, harassment and sexual misconduct policies:

- 2 Co-chairs: one representative from HR and one from Student Life, etc., who are *ex officio* members and who respectively Chair resolution panel hearings for allegations involving student and employee responding parties
- At least 3 members of the faculty
- At least 5 members from administration/staff
- At least one representative from Campus Safety and Security
- At least one representative from Human Resources

ERP pool members are usually appointed to three-year terms. Individuals who are interested in serving in the pool are encouraged to contact the Title IX Coordinator. As with all committees at the College, serving a multiple-year term on a committee is not part of the ERP members' employment agreement and does not guarantee or infer an employment relationship beyond the employee's annual employment contract. No member of the pool may be a practicing attorney.

## **Dating, Intimate Partner Violence**

This is violence committed by a person who is or has been in a relationship of a romantic or intimate nature. Such a relationship may be determined based on consideration of: the length of the relationship; the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

## **Discrimination**

The College's position on non-discrimination may be found at: [Non-Discrimination Statement and Policy](#)  
Discrimination is the adverse treatment of an individual or group, based upon race, color, religion, gender, national origin, age, disability, sexual orientation and genetic information consistent with the applicable state and federal laws.

## **Equal Access and Opportunity**

The Recipient is committed to the policy that all persons shall have equal access to its programs, facilities and employment. The Recipient supports an environment that fosters respect and values all people. It promotes diversity with fair and impartial treatment of all students and employees in all terms and conditions of admissions and employment.

## **Grievance Procedures**

Formerly known as "Due Process", a Grievance may be brought forward by the complainant or the respondent(s) if they disagree with the investigation's outcome, including sanctions and supporting measures. A formal grievance will result in a Hearing Panel being convened to consider either or both parties' grievances as relates to the procedures contained in the ERP or the outcomes of the investigation.

## **Harassment**

Any unwelcome behavior or treatment toward a person based upon their actual or perceived membership of a protected class.

## **Hearing Panels and Equity Resolution Hearing Proceedings**

A Hearing Panel is composed of a non-voting co-chair plus three members from the Equity Resolution Process Pool. The Hearing Panel has the authority to hear all allegations of discrimination, harassment, retaliation and sexual misconduct. The Hearing panel may also hear allegations of “collateral misconduct”, which may be additional alleged policy violations that have occurred in concert with the allegations of discrimination, harassment, retaliation and/or sexual misconduct, even though those collateral allegations may not specifically fall within the panel’s jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

The Equity Resolution Hearing proceedings will include: the investigator(s) who conducted the investigation; the reporting party; the responding party; advisors to the parties and any called witnesses. Hearings will usually be convened within ten (10) working days of the completion of the investigation into the allegations brought forward, and will be conducted in private.

## **Mandated Reporters / Responsible Employees - “Officials with Authority”**

With limited exception, individuals that are obligated to bring forward allegations of discrimination, harassment or sexual misconduct include: Board of Trustees Members; the President; Vice Presidents; Deans; Directors; Coordinators; Supervisors; Admissions Staff; Campus Safety and Security Staff; Staff and Faculty. All “Officials with Authority” with knowledge of any incident that may be a violation of the Title IX Policy shall immediately report such incident to the Title IX Coordinator. Officials with Authority have the ability to institute corrective measures on behalf of the Recipient. The Recipient will clearly designate its “Officials with Authority”.

## **Mandatory Dismissal (of Title IX claims) and Jurisdiction**

Pursuant to 106.45(b)(3)(i) The Recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would: not constitute sexual harassment as defined in 106.30 even if proved, did not occur in the College’s education program or activity, did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude the Recipient from taking action under other provisions set forth in policy and procedures that may result in disciplinary actions or sanctions. Examples of this could be “Drug Free Workplace”, Anti-Harassment or Student / Employee Codes of Conduct.\*

*\* If a person files a formal complaint presented as a Title IX complaint, the Recipient must investigate it. If the Title IX Coordinator finds that the complaint does not violate Title IX or is without merit under Title IX, then the Title IX complaint may be dismissed. However, other Recipient policies and codes of conduct may apply and will be investigated as normal.*

## **Protected Class**

Characteristics of an individual or group that are protected under law. These include: race, color, religion, gender, national origin, age, disability, genetic information or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

## **Hostile Environment**

A hostile learning or working environment may be created by harassing verbal, written, graphic, or physical conduct that is so severe, persistent, pervasive, and objectively offensive, such that it interferes with, denies or limits someone's ability to participate in or benefit from the Recipient's educational programs, employment, social or community opportunities.

## **Preponderance of the Evidence**

This is the required standard for determining a policy violation. Arbiters of these procedures must be convinced that based on the information provided, a policy violation is more likely to have occurred than not to have occurred.

## **Rape**

Any type of forced intercourse that is perpetrated against the will of a person and may involve physical violence, coercion or the threat of harm. Rape does not require that a person explicitly say "no" to his or her attacker. Sometimes people are unable to give consent because they are unconscious, asleep or under the influence of alcohol or drugs.

## **Recipient**

As a receiver/beneficiary of federal funds, the College will now be referred to as the "Recipient" in these ERP procedures.

## **Retaliation**

Any adverse reaction taken against a person for alleging harassment, supporting a party bringing a grievance, or for assisting in providing information relevant to a claim of harassment. Retaliation includes, but is not limited to intimidation, threats, menacing behavior, and/or coercion.

## **Respondent**

An individual who has been accused of committing an act of discrimination, harassment or sexual misconduct.

## **Student**

An individual who has gained admission, is enrolled, or is seeking to participate in any program offered by the Recipient, either full or part-time.

## **Sexual Harassment**

Any unwelcome sexual advance, request for a sexual favor and/or any other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is made either explicitly or implicitly:

1. A term or condition of an individual's employment, academic standing, instruction or education
2. Used as a basis for evaluation in making employment or academic decisions affecting the individual
3. Has the purpose or effect of substantially interfering with an individual's employment or academic performance by creating any intimidating, hostile or demeaning environment

*For more detail and examples, see pages 17 - 20*

## **Sexual Violence**

Any sexual act or attempt to obtain a sexual act by violence or coercion, acts to traffic a person or acts directed against a person's sexuality, regardless of the relationship to the Reporting party.

*For more detail and examples, see pages 17 - 20*

## **Sexual Assault**

Any unwanted sexual contact in which a person is threatened, coerced or forced to comply against his/her will. Sexual assault includes all forms of rape, attempted rape and nonconsensual sexual physical contact.

*For more detail and examples, see pages 17 - 20*

## **Sexual Misconduct**

Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women and it can occur between people of the same or different gender.

*For more detail and examples, see pages 17 - 20*

## **Stalking**

Refers to engaging in a course of conduct directed at a specific person that would cause an individual to fear for their own safety; or the safety of others.

## REPORTING - General

Reports of discrimination, harassment, sexual misconduct and/or retaliation may be made using any of the following options:

- 1) Report directly: To the Title IX Coordinator or Deputy Title IX Coordinator
- 2) Report online: Using the [Referral Form](#) posted on the College's [Title IX Information](#) page
- 3) Report to: Official with Authority (limited exceptions in cases of "confidential employees" are noted later in this process)
- 4) Report to: The Department of Education's Office of Civil Rights (page 4)
- 5) Report to: The EEOC (page 4)
- 6) Report to: Law Enforcement (page 4)

A report of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Recipient's President at (704) 878-3205.

### College's Response to Reports

All reports are acted upon promptly and every effort is made to preserve the privacy of information in the reports.

Anonymous reports will be investigated to the extent possible to determine if remedies can be provided. All employees (unless "confidential") of the Recipient are considered mandatory reporters and will share a report with the Title IX Coordinator promptly.

There is no time limitation on the filing of reports. However, if the responding party is no longer subject to the College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited.

## SCOPE

The Recipient is committed to promote the goals of fairness and equity to best serve its students, faculty, and staff. Recipient's policies that protect the civil rights of students, faculty, and staff are subject to resolution using the Equity Resolution Process (ERP), and include AD 02.16 Title IX; HR 05.01 Equal Opportunity and Nondiscrimination Policy; and, 05.19 Anti Harassment Policy.

*The ERP is applicable only to complainants that are enrolled in or seeking to participate in any program offered by the recipient, or are an employee of the Recipient.*

The following are examples of civil rights that are subject to the Equity Resolution Process:

### 1. Nondiscrimination

The Recipient adheres to all federal and state civil rights laws prohibiting discrimination in public institutions of higher education. The Recipient will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, religion, gender, national origin, age, disability, genetic information, pregnancy or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

Any member of the campus community who acts to deny, deprive or limit the educational, employment access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the Recipient's policy on Nondiscrimination. When brought to the attention of the Recipient, any such discrimination will be appropriately addressed and remedied by the Recipient according to the Equity Resolution Process. Non-members of the campus community (neither a student nor an employee) who engage in discriminatory actions within Recipient programs or on the Recipient's property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with Recipient programs as the result of their misconduct.

## **2. Accommodation of Disabilities**

The Recipient is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Recipient has a designated Coordinator for Accessibility Services and ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

### **a. Students with Disabilities**

The Recipient is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact Marks Elder, Coordinator of Disability Services and ADA/504 Coordinator who coordinates services for students with disabilities. The Coordinator may be reached at 704-878-3364, [MElder@mitchellcc.edu](mailto:MElder@mitchellcc.edu) or at 500 West Broad Street in Statesville, NC in the Eason Building's Student Services office in Room 110. The Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

### **b. Employees with Disabilities**

Pursuant to the ADA, the Recipient will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to Paul Santos, Director of Human Resources and providing appropriate documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties. The Director of HR may be reached at 704-878-5409, [psantos@mitchellcc.edu](mailto:psantos@mitchellcc.edu) or at 500 West Broad Street in Statesville, NC in the Main Building's HR office in MB-306.



### **3. Harassment**

HR Policy 05.19 covers discriminatory harassment. Students, staff, and faculty are entitled to a working and educational environment free of discriminatory harassment. The Recipient's Anti-Harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matter protected by academic freedom. The sections below describe the specific types of legally prohibited harassment that are also prohibited under policy.

#### **a. Discriminatory and Bias-Related Harassment**

The Recipient will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. The Recipient will remedy all forms of harassment when reported. When harassment rises to the level of creating a hostile environment, the Recipient may also impose sanctions on the harasser through application of the Equity Resolution Process.

If a claim is found to be not based on a protected status, or does not rise to the level of a hostile environment, other conflict-resolution policies and procedures will be followed. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Vice President for Student Services.

#### **b. Sexual Harassment and Sexual Misconduct**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of North Carolina regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice.

The Recipient has adopted the following definition of sexual harassment and sexual misconduct, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well - Sexual harassment and sexual misconduct is any unwelcome sexual advance, request for a sexual favor and/or any other verbal or physical conduct of a sexual nature when:

1. Submission to or rejection of such conduct (*quid pro quo*) is made implicitly or explicitly a term or condition of an individual's employment, academic standing, instruction or education;
2. Submission to or rejection of such conduct (*quid pro quo*) by an individual is used as the basis for evaluation in making employment or academic decisions affecting the individual; and/or
3. Such conduct has the purpose or effect of substantially interfering with an individual's employment, academic performance or living conditions by creating any intimidating, hostile or demeaning environment.

Examples of sexual misconduct that may constitute sexual harassment include, but are not limited to:

- unwelcome sexual propositions, invitations, solicitations and flirtations;
- unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance or sexual activities;
- unwelcome use of sexually degrading language, jokes or innuendoes;
- unwelcome suggestive or insulting sounds or whistles;
- obscene phone calls;
- unwelcome and inappropriate touching, patting, pinching or obscene gestures

Anyone experiencing sexual harassment or sexual misconduct in any of the Recipient's programs is encouraged to report it immediately to the Title IX Coordinator, Deputy Title IX Coordinator, or an Official with Authority. Remedies, education and/or training will be provided in response.

The Recipient reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved.

Violations include sexual harassment, sexual touching, and sexual exploitation.

**Sexual Harassment:** Defined in Section 3. b.

**Non-Consensual Sexual Intercourse:** any sexual intercourse, however slight with any object by a person upon another person that is without consent and/or by force.

**Sexual intercourse includes:** Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

**Non-Consensual Sexual Contact:** any intentional sexual touching, however slight with any object by a person upon another person that is without consent and/or by force.

**Sexual touching includes:** Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts; making another touch you or themselves with or on any of these body parts; or, any other bodily contact in a sexual manner.

**Sexual Exploitation:** Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact.

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

Sexual Voyeurism - (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).

Invasion of sexual privacy - Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).

Prostitution

Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.

Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).

Exposing one's genitals in non-consensual circumstances.

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

## **Force and Consent**

**Force:** The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**NOTE: Silence or the absence of resistance alone is not consent.** *There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.*

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In North Carolina, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

**Example of sexual misconduct due to coercion and a lack of consent:**

Jane and Bill meet at an afternoon student orientation. After the orientation, Bill convinces Jane to join him in a vacant classroom. Once they are alone, for the next hour, Bill uses every line he can think of to convince Jane to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Jane would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but she was “playing shy and hard to get”.

Bill has committed **sexual misconduct**. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Jane was unreasonable. Bill coerced Jane into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.

## 4. Protected Class Discrimination

The following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a *protected class*:

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Recipient's community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally and is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
- Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other.
- Stalking 1, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome, AND would cause a reasonable person to feel fear.
  - Example - a male student repeatedly shows up outside of a female student's classes and also shows up to their on-campus place of employment requesting that they go out on a date together. The female student has notified the campus dean and security that the male student's conduct is unwelcome.
- Stalking 2, defined as repetitive and menacing, i.e. the pursuit, following, harassing and/or interfering with the peace and/or safety of another.
  - Example - a student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the student tutor's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together".
- Any other Recipient policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

## **5. Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of the Recipient's policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The Recipient is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

Sanctions for the above-listed behaviors that contribute to harassment, discrimination or sexual misconduct will range from reprimand through expulsion (students) or warning through to termination of employment (faculty and staff).

## **6. Immediate Remedial Action & Supportive Measures**

The Recipient will implement initial supportive measures, responsive and/or protective actions upon notice of alleged harassment, retaliation, sexual misconduct, and/or discrimination. Such actions could include but are not limited to: no contact directives, providing counseling and/or medial services, academic support, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

The Recipient will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The Recipient will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the Recipient's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described next.

## 7. Reporting Offenses

All Recipient employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report offenses and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at the Recipient:

### a. Confidential Reporting

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

- On-campus Confidential Employee
  - Mitchell's Confidential Employee:
    - Myra Lewis, Director of Academic Advising  
Student Services Center, Suite 100  
[mlewis@mitchellcc.edu](mailto:mlewis@mitchellcc.edu)  
(704) 978-1309
- Off-campus (non-employees)
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains

The above-listed resources will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. The Recipient's Confidential Employee is available to help free of charge and can be seen during normal working/class hours, between 8:00 a.m. and 4:30 p.m. Students and employees also have the option of confidentially utilizing the Recipient's Employee Assistance Program by calling 800.633.3353 or visiting [www.mygroup.com](http://www.mygroup.com), using username: "mcc" and password: "guest".

All Recipient resources listed will submit ANONYMOUS statistical information for Clery Act purposes unless they believe it would be harmful to their complainant.

### b. Formal Reporting Options

Most of the Recipient's employees have a duty to report, unless they fall under the "Confidential Reporting" section above. Complainants may consider whether they share personally identifiable details with the Recipient's Responsible Employees / Officials with Authority employees, as those details must be shared with the Title IX Coordinator. Responsible Employees / Officials with Authority must promptly share all details of the reports they receive.

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant or reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of their duty to ensure the safety of the campus and comply with

federal law. Note that the Recipient's ability to remedy and respond to a reported incident may be limited if the complainant or reporting party does not want the Recipient to proceed with an investigation under the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the Recipient will likely be unable to honor a request for confidentiality. In cases where the complainant or reporting party requests confidentiality and the circumstances allow the Recipient to honor that request, the Recipient will offer supportive measures and remedies to the complainant, but will not otherwise pursue formal action. A complainant or reporting party has the right, and can expect, to have allegations taken seriously by the Recipient when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the complainant, and only a small group of officials who need to know will be told, including but not limited to: Student Services, Title IX Coordinator, Human Resources and Security. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a complainant's rights and privacy. [Additionally, ANONYMOUS reports can be made by complainants using the online referral form posted at <https://www.mitchellcc.edu/title-ix-information>. Note that anonymous reports may prompt a need for the institution to investigate.

Failure of a Responsible Employee / Official with Authority to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of Recipient's policy and can be subject to disciplinary action for failure to comply.

## **8. Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, Recipient administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The Recipient will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **9. False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

## **10. Amnesty for Reporting Party and Witnesses**

The Recipient encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to officials, and that witnesses come forward to share what they know. To encourage reporting, the Recipient has a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

**Student Amnesty:** Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Security). The Recipient pursues a policy of amnesty for students who offer help to others in need.



**Employee Amnesty:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get themselves in trouble (for example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to the College). The institution, at its discretion, may offer employee reporting parties amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.

## 11. Parental Notification

The Recipient reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The Recipient may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the Recipient will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The Recipient also reserves the right to designate which Recipient officials have a need to know about incidents that fall within this policy, pursuant to the [Family Educational Rights and Privacy Act](#) (FERPA).

## 12. Federal Statistical Reporting Obligations

Certain campus officials – those deemed “Officials with Authority” - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to Recipient security regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the [Annual Security Report \(ASR\)](#). The ASR helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, Recipient security, local police, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

**PART B**

**Administrative Guidelines**

**and**

**Process**

# EQUITY RESOLUTION ADMINISTRATIVE GUIDELINES

The Recipient will act on any allegation or notice of violation of the policies that protect students' and employees' civil rights.

The procedures described below apply to all allegations of discrimination, harassment or sexual misconduct on the basis of protected class involving students, staff or faculty members. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). *All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff codes of conduct, handbooks, etc.*

## Overview

Upon notice to the Title IX Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the Recipient will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determines whether the nondiscrimination policy has been violated. If so, the recipient will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

### 1. The Equity Resolution Process (ERP)

Allegations of Discrimination, Harassment or Sexual Misconduct as explained in these procedures are resolved using the ERP. Members of the ERP pool are announced in an annual distribution of this policy to campus, prospective students, their parents and prospective employees. The list of members and a description of the panel can be found on the Recipient's web site. Members of the ERP pool are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to allegations
- To serve in a mediation or restorative justice role in conflict resolution
- To investigate allegations
- To act as process advisors to those involved in the Equity Resolution Process
- To serve on hearing panels for allegations
- To serve on appeal panels for allegations

ERP pool members may also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Title IX Coordinator, appoints the ERP pool, which reports to the Title IX Coordinator. ERP pool members receive annual training organized by the Title IX Coordinator, including a review of policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the College's Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); confidentiality and privacy; and

applicable laws, regulations and federal regulatory guidance. All ERP pool members are required to attend this annual training to be eligible to serve.

The Equity Resolution Process pool includes:

- 2 Co-chairs: one representative from HR and one from Student Life, etc., who are *ex officio* members and who respectively Chair resolution panel hearings for allegations involving student and employee responding parties
- At least 3 members of the faculty senate
- At least 5 members of the administration/staff
- At least one representative from Campus Safety
- At least two representatives from Human Resources

ERP pool members may be appointed for terms up to three-years. Appointments to the pool should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving in the pool are encouraged to contact the Title IX Coordinator. No member of the pool may be a practicing attorney.

## 2. Reporting Misconduct

Reports by complainants\* that believe they have seen or have been subject to discrimination, harassment or sexual misconduct should contact the Title IX Coordinator. *\*The ERP is applicable only to complainants that are enrolled in or seeking to participate in any program offered by the recipient, or are an employee of the recipient.*

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. The supervisor, advisor or faculty member may then contact the recipient's Security personnel to make a report. These individuals will in turn notify the Title IX Coordinator. The recipient's website also includes a reporting form at which may serve to initiate the resolution process.

Employees receiving reports of a potential violation of Recipient policy are expected to promptly contact the Title IX Coordinator within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the Recipient's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the Recipient will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

## 3. Preliminary Inquiry

Following receipt of a report of misconduct, the Title IX Coordinator (or his/her designee) engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-3 work days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the Recipient reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the Recipient determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of three processes below. The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Coordinator. :

- **Conflict Resolution** – Typically used for less serious offenses and only when both parties agree to conflict resolution.
  - Conflict Resolution may only occur if selected by all parties.
  - If Conflict Resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.
- **Informal Resolution** – The parties can elect for Informal Resolution, but Informal Resolution may only apply if the responding party accepts responsibility for all alleged violations of policy. In other words, the responding party is not contesting the validity of the allegations. Informal Resolution is conducted without a hearing panel.
- **Formal Resolution (and Grievance)** – If either party or both parties are not in agreement with an investigation’s findings and sanctions the allegations will be heard before a Hearing Panel.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. The Recipient aims to complete all investigations within a sixty (60) **calendar** day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that policy has been violated, the investigation may be dismissed and will end unless the reporting party requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Title IX Coordinator.

#### 4. Interim Remedies / Actions

The Title IX Coordinator may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees
- Providing campus escorts
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The Recipient may interim suspend a student or employee pending the completion of the ERP investigation and procedures, particularly when in the judgment of the Title IX Coordinator the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the option to meet with the Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. **The Title IX Coordinator has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.** Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to campuses/facilities/events. As determined by the Title IX Coordinator, this restriction can include classes and/or all other activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

## 5. Investigation

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints Title IX Investigators (usually the Title IX Deputy Coordinator or an ERP pool member) to conduct the investigation, usually within two (2) work days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within ten (10) work days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

In cases when criminal charges on the basis of the same behaviors that invoke this process are being investigated, the Recipient may undertake a short delay in its investigation (several days to weeks, to allow evidence collection). The Recipient will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. Recipient action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The Title IX investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy. If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations [charges] on the basis of the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of an ERP pool member or other advisor of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.

- Provide the parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Once the report is complete, the report is shared with the parties for their review and comment. The investigators may incorporate feedback from the parties as appropriate;
- Make - or recommend to the Title IX Coordinator - a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Investigators and/or the Title IX Coordinator finalize and present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and the responding party's decision on the finding, without undue delay.

At any point during the investigation, if it is determined there is no reasonable cause to believe that Recipient policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

## 6. Witnesses

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the Recipient's investigation and the Equity Resolution Process. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing (if a hearing is held). Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype, ZOOM (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the hearing and/or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

**With the exception of the Recipient, no unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Process proceedings.**

## 7. Advisors

The parties to a Grievance are required to have an Advisor at live hearings, meetings, proceedings. Each party may choose an advisor of their choice from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors and advisors cannot also serve as witnesses. The parties may choose advisors from inside or outside the campus community. The Title IX Coordinator will also offer to assign a trained ERP pool member to work as an advisor/advocate for any party.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The Recipient cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an

attorney, the Recipient is not obligated to provide one. Responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the reporting party to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the Recipient an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The Recipient expects that the parties will wish to share documentation related to the allegations with their advisors. The parties must complete a **consent form** before the Recipient is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by the Recipient. The Recipient may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the Recipient's privacy expectations.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) work day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.



## 8. Conflict Resolution | Informal Resolution | Formal Resolution

Meetings are private and with a **trained administrator mediator**. Persons present at any time during the meeting are expected to maintain the privacy of the proceedings. While the contents of the meeting are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

### a. Conflict Resolution

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator mediator / ombudsman will facilitate a dialogue with the parties to reach an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. **Mediation will not be used in cases of sexual violence.** It is not necessary to pursue conflict resolution first in order to pursue Informal or Formal Resolution, and either party participating in Conflict Resolution can stop that process at any time and request a shift to either Informal or Formal Resolution.

### b. Informal Resolution: Resolution Without a Hearing Panel

Informal Resolution can be pursued for behavior that falls within the policies of Equal Opportunity, Anti-Harassment, Nondiscrimination, and Sexual Misconduct at any time during the process. This option may be used when:

- A responding party admits responsibility for all or part of the alleged policy violations at any point in the process;
- When the investigation reaches a finding that the parties accept;
- When both parties elect to resolve the allegation using the Informal Resolution process and the Title IX Coordinator assents

In Informal Resolution, the Title IX Coordinator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment and Nondiscrimination. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the Title IX Coordinator believes is relevant and credible may be considered, including history and pattern evidence. The Title IX Coordinator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the Title IX Coordinator may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The Title IX Coordinator will not meet with character witnesses, but will accept up to two (2) letters supporting the character of each of the parties.

The Title IX Coordinator will base the determination(s) on the preponderance of the evidence standard: whether it is more likely than not that the responding party violated policy as alleged.

Typically, within ten (10) work days of the close of an investigation which determines that a responding party is in violation of policy, the Title IX Coordinator will meet with the responding party to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations. If the responding party admits responsibility, in whole or in part, the Title IX Coordinator will render a determination that the individual is in violation of Recipient policy for the admitted conduct. If the respondent files a grievance based upon the findings, a hearing panel will be convened on any remaining disputed violations.

If the responding party admits to the violation(s), the Title IX Coordinator, in consultation as appropriate, will determine an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the reporting party and responding party, the Title IX Coordinator will implement the finding and sanction, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct.

**If both parties agree with the sanction/responsive action, no appeal is permitted.**

**If either party rejects the sanction/responsive action, a formal hearing will be held on the sanction/responsive action only, according to the Formal Resolution procedures below.**

If alleged misconduct is resolved at this stage, the Title IX Coordinator will inform the parties of the final determination within three (3) work days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The **notification of outcome** will specify the finding on each alleged policy violation, any sanctions that may result which the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under state or federal law. The notice will also include information on when the results are considered by the Recipient to be final, any changes that occur prior to finalization, and any appeals options that are available.

At any point during the Informal Resolution process, including at its conclusion, either party may request that the matter be referred to a Hearing Panel, except in cases where the responding party is an at-will employee (an employee with no employment contract).

### **c. Formal Resolution: Resolution with a Hearing Panel**

For all contested allegations that are not resolved through either Conflict Resolution or Informal Resolution, the Title IX Coordinator will initiate a formal Hearing Panel within ten (10) work days of the conclusion of the investigation, barring unusual circumstances.

## **9. Formal Hearing Panel Procedures**

### **a. Hearing Panels**

The Title IX Coordinator will refer the investigation findings to one of the non-voting panel Chairs depending on whether the responding party is an employee or a student. The Chair will empanel three members from the available ERP pool to the hearing panel, none of whom have been previously involved with the allegation. An alternate will sit in throughout the process if needed or at the discretion of the Chair. Those who served as investigators will be witnesses in the hearing of the allegation and therefore may not serve as hearing panel members. Those who are serving the parties as advisors, if any, are not eligible to serve as panelists. The panel will meet at a time determined by the Chair.

### **b. Notice of Hearing**

At least five (5) work days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Chair will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Co-chair may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing (See Section 7: "Advisors" above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Recipient and remain within the sixty (60) day goal for resolution.

### **c. Hearing Procedures**

Hearing panels will usually be convened within ten (10) work days of the completion of the investigation, and will be conducted in private. The panel has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the panel's jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the non-voting Chair, the three (3) members of the panel, the investigator(s) who conducted the investigation, the reporting party, responding party (or three (3) organizational representatives where an organization is charged), advisors to the parties and any called witnesses.

#### **Pre-Hearing**

The Chair will exchange the names of witnesses who will be participating in the hearing, all pertinent documentary evidence and the investigation report between the parties at least two (2) work days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing. In addition, the parties will be given a list of the names of each of the hearing panel members at least two (2) work days in advance of the hearing.

All objections to any panelist must be raised in writing to the Chair as soon as possible. Hearing panel members will only be unseated if the Chair concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each party and witnesses at least two (2) work days in advance of the hearing. Any panelist or Chair who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative attendance or questioning mechanisms are desired, such as the reporting party not wanting to be in the same room as the responding party for the hearing (screens, Skype, Zoom, questions directed through the Chair, etc.), the parties should request them from the Chair at least two (2) work days prior to the hearing. In the case of documented disabilities for which accommodations in the process are necessary, Recipient will make reasonable accommodations for the parties when requested in advance.

### **Investigator Presents the Report**

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the panel. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) present their report and are questioned, the panel will permit the parties to provide relevant information in turn and permit questioning of and by the parties. The panel will then permit all present witnesses to provide relevant information and the panel and the parties will each be allowed to ask questions of the witnesses. Questions are usually directed to the parties and witnesses through the panel at the discretion of the Chair.

### **Evidence Presented at the Hearing**

Formal rules of evidence do not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Hearing Panel Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. The Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the panel with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

There will be no observers in the hearing. The Chair may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved, and then be excused. The panel does not hear from character witnesses, but will accept up to two (2) letters supporting the character of each of the parties.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the Title IX Coordinator may permit the hearing pertinent to each responding party to be conducted separately.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with Recipient policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Panel members, the parties, and appropriate administrative officers of the Recipient will be allowed to listen to the recording in a location determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **Alternative Testimony Options**

For sexual misconduct reports, and other reports of a sensitive nature, the reporting party will be offered alternative testimony options, such as testifying outside the physical presence of the responding party, such as by Skype or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

### **d. Deliberation and Decisions**

Members of the hearing panel and the non-voting Chair will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The panel will base its determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). If a responding party or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions.

The Chair will prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator within two (2) work days of the end of deliberations, unless the Title IX Coordinator grants an extension.

The Title IX Coordinator will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) work days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official Recipient records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the Recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the Recipient is permitted to share under state or federal law. The notice will also include information on when the results are considered by the Recipient to be final, any changes that occur prior to finalization and any appeals options that are available.

### **e. Sanctions**

The hearing panel assigned to the resolution will recommend sanctions or responsive actions to the Title IX Coordinator. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel

- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation and prevent future occurrences

#### i. Student Sanctions [Example]

When it is determined that disciplinary action be taken as the results of an investigation under these procedures, the Vice President of Student Services will receive a copy of the investigative report, along with all supporting documentation, before initiating any disciplinary action in accordance with Mitchell's Student Code of Conduct, and the Student Rights, Responsibilities and Judicial Procedures. The following are examples of sanctions that may be imposed upon students singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any Recipient policy, procedure or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Recipient policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at the College. This sanction may be noted as a Student Code of Conduct suspension on the student's official transcript, at the discretion of the Title IX Coordinator.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend College-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** The Recipient may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The Recipient reserves the right to revoke a degree awarded from the Recipient for fraud, misrepresentation or other violation of Recipient policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges (including University registration), for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

#### ii. Employee Sanctions [Example]

When it is determined that disciplinary action be taken as the results of an investigation under these procedures, the Director of Human Resources will receive a copy of the investigative report, along with all supporting documentation, before initiating any disciplinary action in accordance with Mitchell's Employee Policies and Procedures. The following are examples of sanctions that may be imposed upon employees singly or in combination:

- *Disciplinary Actions: Verbal or Written Warnings*
- *Placement on a Performance Improvement Plan*
- *Required Counseling, Training or Education*
- *Loss of Annual Pay Increase*
- *Administrative Leave with or without pay*
- *Termination*

- *Other Actions: In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.*

#### **f. Withdrawal or Resignation While Charges Pending**

Students: The Recipient does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination. Should a student decide to leave and/or not participate in the ERP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Recipient unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any Recipient responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire. As is standard with all inquiries regarding employment references, no further detail on eligibility or ineligibility for rehire will be provided by the College.

#### **g. Appeals**

A three-member appeals panel chosen from the ERP pool will be designated by the Title IX Coordinator from those who have not been involved in the process previously.

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within three (3) work days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below:

Any party may appeal, but **appeals are limited to the following grounds:**

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the Recipient has designated for this offense and the cumulative record of the responding party.

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) work days. Any response or appeal request will be shared with each party.

Where the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.

- Appeals are not intended to be full re-hearings of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original hearing panel merely because they disagree with its finding and/or sanctions.
- Appeals granted based on new evidence should normally be remanded to the original hearing panel or investigators for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the three-member appeals panel.
- Sanctions imposed as the result of the Formal or Informal Resolution processes are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) work days from hearing of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, that finding or sanction can be appealed one **final time on the grounds listed above, and in accordance with these procedures.**
- All parties will be informed in writing within three (3) work days of the outcome of the Appeals Panel, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original hearing panel (as in cases of bias), the appeals panel may recommend a new hearing with a new hearing panel. The results of a remand to a hearing panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the Recipient or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.
- The Recipient's President has the option to review the Appeals Panel's findings and/or respond to an appeal from the reporter or respondent if they wish to have the Appeals Panel's findings reviewed further. **Due to the powers of the President as delegated by the Board of Trustees, the decision of the President regarding an appeal of the Appeals Panel's findings is final.**

#### **h. Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Implementing long-term contact limitations between the parties



- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

#### **i. Failure to Comply with Interim and Long-term Remedies / Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the Recipient and may be noted on a student's official transcript or an employee's file. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **j. Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely.

#### **k. Statement of the Rights of the Parties**

##### ***Statement of the Reporting Party's rights:***

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to recipient officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by Recipient officials.
- The right to have recipient policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by recipient officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by Recipient officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;

- The right to notification of and options for, and available assistance in, changing academic situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options.
- The right to have the Recipient maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence;
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports heard by hearing and appeals officers who have received annual sexual misconduct training;
- The right to a panel that is not single-sex in its composition, if a panel is used;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews and/or hearings that are closed to the public;
- The right to petition that any Recipient representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;
- The right to bring an advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
- The right to provide evidence by means other than being in the same room with the responding party;
- The right to have the recipient compel the participation of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, [directly or indirectly], of all present witnesses [including the responding party], and the right to challenge documentary evidence]
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to submit an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the Recipient is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College

***Statement of the Responding Party's rights:***

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to recipient administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by Recipient officials;
- The right to have Recipient policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation(s), the applicable policies and procedures and possible sanctions;
- The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation; (does not apply to at-will employees)
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least two (2) work days prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports heard by hearing and appeals officers who have received annual sexual misconduct training;
- The right to petition that any Recipient representative be recused from the resolution process on the basis of demonstrated bias and/or conflict of interest;
- The right to a panel that is not single-sex in its composition, if a panel is used;
- The right to meetings, interviews and hearings that are closed to the public;
- The right to have the Recipient compel the participation of student, faculty and staff witnesses, and the opportunity to ask questions, [directly or indirectly], of all present witnesses, and the right to challenge documentary evidence;
- The right to have an advisor of their choice to accompany and assist in the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to submit an impact statement in person or in writing to the hearing officers board following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision of the Recipient is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so.

## **10. Disabilities Accommodation in the Equity Resolution Process**

The recipient is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process. Anyone needing such accommodations or support should contact the Coordinator of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation.

## **11. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The recipient reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

These procedures were adopted and implemented on August 26, 2020.

*While on campus this policy can be viewed by accessing Human Resources on SharePoint*