

## **LANSING COMMUNITY COLLEGE (LCC)**

### **STUDENT SEXUAL MISCONDUCT COMPLAINT PROCESS**

Your health, safety and well-being are the College's primary concern. If you, or someone you know, may be the victim of any form of sexual misconduct, you are strongly urged to seek immediate assistance. Assistance can be obtained 24 hours a day, seven days a week, from:

Police (Lansing Police Department) – 911  
SAFE Center (St. John's, MI) – (877) 952-7283  
Listening Ear Crisis Center (East Lansing, MI) – (517) 337-1717  
National Domestic Violence Hotline – (800) 799-7233  
National Dating Abuse Hotline - (866) – 331-9474  
Lansing Community College Police and Public Safety – (517) 483-1800

During business hours (8:00 a.m. to 5:00 p.m., Monday through Friday), you are also strongly urged to contact, whether student or employee, one of the following Title IX Coordinators as soon as reasonably possible to report any sexual misconduct you believe may have occurred.

#### **For complaints against a student, contact the Student Title IX**

##### **Coordinator:**

Christine Thompson  
Director of Student Compliance, Student Title IX Coordinator  
Location: GB 133  
Phone: 517.483.9632  
Email: [thompsc@lcc.edu](mailto:thompsc@lcc.edu)

#### **For complaints against an employee, contact the Employee Title IX Coordinator:**

Lori Willett  
HR Manager, Employee Title IX Coordinator  
Location: ADM 106.10  
Phone: 517.483.1979  
Email: [willetl1@lcc.edu](mailto:willetl1@lcc.edu)

This process covers complaints of alleged sexual misconduct/harassment by College students in accordance with the College's Prohibited Discrimination and Harassment Policy.

If you or someone you know is a victim of sexual misconduct by a member of the College faculty, staff, visitor or guest, you may report such misconduct or file a complaint with the Employee Title IX Coordinator, as indicated above.

Further information about Title IX and sex discrimination in education is available from the Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100 (by Customer Service Hotline: 800-421- 3481; fax: 202-453-6012; TDD: 877-521-2172; email: OCR@ed.gov; or on the web, at <http://www.ed.gov/ocr>).

## I. INTRODUCTION

### A. Overview and Purpose.

As a recipient of federal funds, Lansing Community College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* ("Title IX"),<sup>1</sup> which prohibits discrimination on the basis of sex in educational programs or activities. Sexual misconduct, as defined in this process, is a form of sex discrimination prohibited by Title IX. The College is committed to providing programs, activities and an educational environment free from sex and gender discrimination.

As a public institution, the College also must provide due process to students accused of sexual misconduct. This procedure is designed to provide a fair process for both parties while also ensuring a complainant's protections under Title IX.

Sexual Misconduct, as defined by this process for student sexual misconduct complaints (referred to as the "student process"), describes a broad range of behavior that will not be tolerated in the College's community of trust. For purposes of this process, "sexual misconduct" includes: sexual exploitation, harassment based on sex or gender which causes a hostile environment, non-consensual sexual contact, and non-consensual sexual intercourse, each as more fully defined below. In addition to sexual misconduct, Title IX also includes, but is not limited to, pregnancy/pregnancy-related issues and gender equality in athletics, academic programs and activities.

Sexual misconduct violates College policy and federal civil rights laws and may also be subject to criminal prosecution. The College is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints. In addition, the College community is highly encouraged to report any and all potential sex or gender harassment to the Student Title IX Coordinator, so that a proper review of the information can be made. Creating a safe environment is the responsibility of all members of the College community.

The College is also required and committed to upholding the First Amendment of the United States Constitution. Nothing in this process is intended to abridge the rights or freedoms guaranteed by the First Amendment.

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<sup>1</sup> Title IX requires that Lansing Community College have a statement of policy and procedure for handling complaints of Sexual Misconduct. 20 U.S.C. 1092(f)(7) and 1681(a). This process constitutes that statement.

B. Definitions.

“Complainant” means any person who submits a report alleging that a student violated this Student Code or the General Rules. When a student believes that s/he has been a victim of another student’s misconduct, the student who believes s/he has been a victim will have the same rights under this Student Code as are provided to the complainant, even if another member of the College community submitted the charge itself. Complainants will receive updates regarding the status of the complaint.

"Clery Act" refers to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.<sup>2</sup>

"College" means Lansing Community College.

“Dating violence” means a pattern of assaultive and/or controlling behaviors that one person uses against another in order to gain or maintain power and control in the relationship. The accused student has intentionally behaved in ways that causes fear, degradation and humiliation to control the victim. Forms of abuse can be physical, sexual, emotional and/or psychological.

In determining whether an individual has engaged in “dating violence,” the following must be established: the accused student and the victim have been in a societal relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on a consideration of the following factors: 1.) length of the relationship, 2.) type of the relationship, and 3.) the frequency of interaction between the persons involved in the relationship.

"Dean" refers to the Dean of Student Affairs (and his or her designee). The College has designated the Dean’s designee as the Student Title IX Coordinator for purposes of this process and in accordance with federal regulations<sup>3</sup>.

"Dean's Office" means the Office of the Dean of Student Affairs, located in the Gannon Building, Suite 135.

“Domestic violence” is a pattern of behavior in which one person uses physical, sexual, economic or emotional abuse to control the victim<sup>4</sup>. This behavior specifically includes assaults or an assault and battery of a person’s spouse or former spouse, an individual with

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<sup>2</sup> 20 U.S.C. Section 1092(f); 34 C.F.R. Part 668.46

<sup>3</sup> 34 CFR Part 106.8(a) requires designation of at least one “responsible employee” who ensures the recipient’s compliance for the institution. The Student Title IX Coordinator and Deputy Student Title IX Coordinator are the individuals responsible for sexual misconduct issues in which a “student” is the accused party.

<sup>4</sup> See “Domestic Violence Awareness” information on the MI State Police webpage at: [http://www.michigan.gov/msp/0,1607,7-123-1589\\_1711\\_4577---,00.html](http://www.michigan.gov/msp/0,1607,7-123-1589_1711_4577---,00.html) (last visited on 10/14/13).

whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household.<sup>5</sup>

"Effective consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective consent is absent when the activity in question exceeds the scope of effective consent previously given.<sup>6</sup> Consent is a free and clearly given yes, not the absence of a no, and cannot be received when a person is incapacitated by alcohol or drugs.

"FERPA" refers to the Family Educational Rights and Privacy Act.<sup>7</sup>

"Force" means physical force, violence, threat, intimidation or coercion.

"Incapacitation" means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments.<sup>8</sup>

The question is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was incapacitated. Because incapacitation may be difficult to discern, students are strongly encouraged to err on the side of caution; e.g., when in doubt, assume that another person is incapacitated and therefore unable to give effective consent. Being intoxicated or drunk is never a defense to a complaint of Sexual Misconduct under this Process.

"Investigators" refers to the individuals trained and designated by the Student Title IX Coordinator to conduct investigations of alleged sexual misconduct, and to determine whether or not there is a reasonable basis to grant a hearing (as more specifically described in Section 4, below). The Student Title IX Coordinator and the Deputy Title IX Coordinator are also trained investigators and may be part of an investigative team at any time when necessary.

"Non-Consensual Sexual Contact" means sexual contact that occurs without effective consent.

"Non-Consensual Sexual Intercourse" means sexual intercourse that occurs without effective

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<sup>5</sup> MCL 750.81(2) considers "domestic violence" a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

<sup>6</sup> MCL 750.520d(1)(a) states that a person is guilty of third-degree criminal sexual conduct if the person engages in sexual penetration with another person and that person is at least thirteen but younger than sixteen years old. Accordingly, a thirteen-year-old child cannot legally consent to sexual penetration with another person because sexual penetration of a thirteen-year-old child is automatically third-degree criminal sexual conduct. *People v. Starks*, 473 Mich 227.

<sup>7</sup> 20 U.S.C. Section 1232g; 34 CFR Part 99

<sup>8</sup> Sokolow, Brett A., Lewis, W. Scott, Schuster, Sandra K., *NCHERM Institute on Responding to Campus Sexual Misconduct*. 2010, p. 49.

consent.

"Off campus conduct" means conduct that occurred on any place other than on College-owned or leased property, at any College sanctioned function, at the permanent or temporary local residence of a College student, faculty member, employee, or visitor, or elsewhere in Michigan, and is reasonably related to a college function or activity.

"Respondent" means any student accused of violating the Student Code or General Rules, or any other rule or policy of the College.

"Sexual contact" means the deliberate touching of a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using force to cause a person to touch his or her own or another person's intimate parts. Sexual assault is any sexual contact without consent.

"Sexual Exploitation" means taking sexual advantage of another person without effective consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly and intentionally exposing another person to a significant risk of a sexually transmitted infection, including, but not limited to, HIV.

"Sexual harassment" means unwelcome conduct, based on sex or on gender stereotypes<sup>9</sup>. Gender based harassment may include, but are not limited to: unwelcome sexual advances, requests for sexual favors, stalking, dating and domestic violence. The College strongly encourages individuals to report all unwelcome conduct based on sex to the Title IX Coordinator.

In evaluating any complaint of sexual harassment, the perceived offensiveness of a particular expression, standing alone, is not sufficient by itself to be actionable. The exclusive purpose of this distinction is to protect students (who may be harassed by students) from sex or gender discrimination, consistent with both federal regulatory law and the requirements of the First Amendment to the United States Constitution.

"Sexual harassment which causes a hostile environment" means unwelcome conduct based on sex or gender (e.g., sexual orientation, gender stereotypes, sexual preference and/or pregnancy or a pregnancy-related status), which is so severe or pervasive, that it unreasonably interferes with a person's College employment, academic performance or participation in College programs or activities *and* creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Types of potential harassment include, but are not limited to, stalking and bullying.

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<sup>9</sup> The inclusion of a definition of "sexual harassment" that is separate from the definition of "sexual harassment causing a hostile environment" was adopted based on the language used in the Montana-Missoula OCR Letter: <http://www.legal.gatech.edu/sites/legal.gatech.edu/files/assets/Montana-Sexual%20Harassment.pdf> (last viewed on 11/22/13).

“Stalking” means a pattern of behavior made up of a series of two or more separate non-continuous acts which shares the same purpose and causes a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed or molested.<sup>10</sup>

"Sexual Intercourse" means penetration (anal, oral or vaginal) by, but not limited to, a penis, tongue, finger, or an inanimate object.

"Sexual Misconduct" is a broad term encompassing “Sexual Exploitation,” “Sexual Harassment”, "Sexual harassment which causes a hostile environment," "Non-Consensual Sexual Contact," and "Non-Consensual Sexual Intercourse," as defined in this process. 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 sex.

"Provision 4 Panel" means the standing group of faculty and staff appointed by the Dean of Students (or his or her designee) to specifically hear complaints of alleged sexual misconduct (Article III(B)(4) of the Student Code of Conduct).

"Student Code of Conduct" means LCC's Student Code of Conduct, as enforced by the Office of Student Compliance.

## **II. JURISDICTION; TIMING; RETALIATION AND RELATED MISCONDUCT; CRIMINAL PROCEEDINGS**

### **A. Jurisdiction.**

1. Personal Jurisdiction. Any person may file a complaint of sexual misconduct against a "student" under this process. A "student" means any student who is registered or enrolled at the College at the time of the alleged sexual misconduct (including, but not limited to, sexual misconduct that is alleged to have occurred during any academic recess, provided that there is an expectation of the student's continued enrollment at the College). If a student who was currently enrolled at the time of the alleged sexual misconduct subsequently withdraws from all courses, the College shall maintain personal jurisdiction.
2. Geographic Jurisdiction. This Process applies to any allegation of sexual misconduct against a College student, regardless of where the alleged sexual misconduct occurred. Although there is no geographical limitation to invoking this process, sexual misconduct that is alleged to have occurred at a significant distance from the College may be more difficult to investigate. In addition, with respect to any complaint (a) by a person who is not a member of the College community, and (b) relating to Non-College Conduct, the College reserves the right to determine, in its sole discretion, whether the conduct described in the

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<sup>10</sup> MCL 750.411h(1)(d).

complaint constitutes a sufficient risk or harm to the College community to warrant processing the complaint.

3. Timing of Complaints and Availability of Procedures. So long as there is personal jurisdiction over the accused student pursuant to Section II.A.1, above, there is no time limit to invoking this process in responding to complaints of alleged sexual misconduct. Nevertheless, students are encouraged to report alleged sexual misconduct immediately in order to maximize the College's ability to obtain evidence, and conduct a thorough, impartial and reliable investigation.

Delays in reporting alleged sexual misconduct may result in the loss of relevant evidence and witness testimony, and may impair the College's ability to engage in this process.

If the accused student will be graduating, the conferral of a degree may be deferred until proper resolution of any sexual misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that may reasonably accommodate the parties and their witnesses.

4. Retaliation. It is a violation of Student Code of Conduct to retaliate against any person making a complaint of sexual misconduct, any person cooperating in the investigation of (including testifying as a witness) of any allegation of sexual misconduct, and supporters of the complainant. For these purposes, "retaliation" includes, but is not limited to: intimidation, threats, harassment, and other adverse action, threatened or taken, against any such complainant or third party. Retaliation should be reported promptly to the Office of Student Compliance and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

- B. Other Related Misconduct. In accordance with this process, the Panel is empowered to hear allegations of, and to impose sanctions for, sexual misconduct *and* any other violation(s) of the College's Student Code of Conduct directly related to the alleged sexual misconduct. Such related misconduct may include, without limitation, violations of the rules of privacy as articulated herein, violations of the Student Title IX Coordinator's directive(s) discussed in Section III.D, below, and/or violations of other Student Code of Conduct that occurred in the course of the alleged sexual misconduct.

It is not the practice of the College to pursue disciplinary action against a complainant or witness for his or her improper use of alcohol or drugs (e.g., underage drinking), provided that such student is acting in good faith as a complainant or witness to the events of the alleged sexual misconduct.

Students who appear before the Panel, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony in accordance with the College's Student Code of Conduct.

- C. Effect of Criminal Proceedings. Because sexual misconduct may constitute *both* a violation of College policy *and* criminal activity, the College encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of the Student Code of Conduct, criminal investigations or reports are *not* determinative of whether sexual misconduct, for purposes of this process or the Student Code of Conduct, has occurred. In other words, conduct may constitute sexual misconduct under this process even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. In such cases, the complainant may not initially understand the results of the criminal investigation, the nature of criminal procedure, or the grounds for the law enforcement decision not to prosecute. The complainant in such cases may request that the Student Title IX Coordinator identify an administrator to assist the complainant in seeking and attending a meeting with the local prosecutor to gain an understanding of the decision to decline a prosecution.

The filing of a complaint of sexual misconduct under this process is independent of any criminal investigation or proceeding, and (except that the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence) the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the complainant and the College community, if necessary, as described in Section III.D, below.

### III. THE PROCESS: INITIAL STEPS

- A. Intake Meeting with Complainant. Upon receipt of notice of any allegation of sexual misconduct, the Student Title IX Coordinator will first schedule an individual intake meeting with the complainant in order to provide to the complainant a general understanding of this process and to identify forms of support or immediate interventions available to the complainant. The intake meeting may also involve a discussion of any interim measures (in accordance with III.D. below) that may be appropriate in light of the known information.
- B. Complainant Wishes to Pursue Formal or Informal Resolution. At the initial intake meeting with the complainant, the Student Title IX Coordinator will gather basic information about the alleged incident and seek to determine how the complainant wishes to proceed, (e.g., whether the complainant wishes to pursue Formal Resolution, Informal Resolution or does not wish to pursue resolution of any kind).

If the complainant wishes to proceed with either Formal or Informal Resolution, the Student Title IX Coordinator will determine the name of the accused student, and



the date, location and nature of the alleged sexual misconduct, and will schedule an individual intake meeting with the accused student in order to provide to the accused student with a general understanding of this process and to identify forms of support or immediate interventions available to the accused student.

If the complainant wishes to proceed with Formal Resolution, the Student Title IX Coordinator will promptly prepare and forward a formal complaint to the investigators for investigation, in accordance with Section IV.B, below. The formal complaint will set forth the name of the accused student, and the date, location and nature of the alleged sexual misconduct.

If the complainant wishes to proceed with Informal Resolution, the Student Title IX Coordinator will promptly refer the matter and initiate Informal Resolution proceedings in accordance with Section V, below.

- C. Complainant Does not Wish to Pursue Resolution or Requests Confidentiality. If the complainant does not wish to pursue Formal or Informal Resolution and/or requests that his or her complaint remain confidential, Title IX nevertheless requires the College to investigate and take reasonable action in response to the complainant's information. The Student Title IX Coordinator will inform the complainant, however, that the College's ability to respond may be limited. The Student Title IX Coordinator may refer the allegation to a designated investigator to conduct a preliminary investigation into the alleged sexual misconduct. The investigator may weigh the complainant's request(s) against the following factors: the seriousness of the alleged sexual misconduct; whether there have been other complaints of sexual misconduct against the same accused student; and the accused student's right to receive information about the allegations if the information is maintained by the College as an "educational record" under FERPA. The Student Title IX Coordinator will inform the complainant if the College cannot ensure confidentiality. Even if the College cannot take disciplinary action against the accused student because the complainant insists on confidentiality or that the complaint not be resolved, the Student Title IX Coordinator reserves the authority to undertake an appropriate inquiry, issue a "no-contact" order, and take other reasonably necessary measures, including the interim measures described in Section III.D, below.
- D. Interim Measures. In *all* complaints of alleged sexual misconduct, *regardless of whether the complainant wishes to pursue Formal Resolution, Informal Resolution or no resolution of any kind*, the College will undertake an appropriate inquiry and take such prompt and effective action that is reasonably practicable under the circumstances to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, the Student Title IX Coordinator may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. The Student Title IX Coordinator, also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, if any,

including, without limitation, directing appropriate College officials to alter the students' academic and/or College employment arrangements and/or issuing an interim suspension. When taking steps to separate the complainant and the accused student, the Student Title IX Coordinator will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the complainant to continue in his or her academic and/or College employment arrangements. Violation(s) of the Student Title IX Coordinator's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

#### **IV. FORMAL RESOLUTION**

A complainant may elect to pursue a formal resolution, which involves a hearing before the Panel, as more particularly described in this section. Such a hearing is also referred to as "Formal Resolution." Formal resolution shall be completed within a reasonable timeframe (which is usually 30 days) unless extended for good cause by the Student Title IX Coordinator.

- A. The Hearing Panel. Formal Resolution involves a hearing before a trained Hearing Panel (the "Panel") made up of two College faculty/staff and an administrator. Each Panel will be led by a Panel Chair (Chair). The Chair will select the Panel. The Panel is a standing group composed of faculty and staff approved by the Deans. The Student Title IX Coordinator will ensure that all Panel members receive annual training.
- B. Investigation. When the complainant indicates a desire to pursue Formal Resolution, the Student Title IX Coordinator will forward the complaint to an appointed investigative team. The Student Title IX Coordinator and the Deputy Student Title IX Coordinator may serve as investigators on any investigation, if necessary. The investigation will be conducted in an adequate, reliable and impartial manner. The investigative team will receive annual training that draws on process, procedures, and professional resources.

Investigators are neutral fact-finders, who, during the course of the investigation, typically conduct interviews with the complainant, the accused student and each third-party witness (including expert witnesses, where applicable); visit and take photographs at each relevant site (if necessary); and, where applicable, coordinate with law enforcement agencies to collect and preserve relevant evidence. The completed investigative report (the "investigative report") includes, among other things, summaries of interviews with the complainant, the accused student and each witness; summaries of interviews with expert witnesses (where applicable); photographs of the relevant site(s) and related logs; other photographic, electronic and forensic evidence; and a detailed written analysis of the events in question.

A typical investigation should be completed within 15 (fifteen) days, if not sooner, but may be delayed with good cause, as determined by the Student Title IX Coordinator. If a hearing is granted by the investigative team, the Panel Chair and

the Panel will be provided with a copy of the investigative report. In addition, at least one member of the investigative team shall be present at the Panel hearing to answer any questions the Panel or the parties may have with regards to the investigative report.

The investigative team shall keep the complaint and investigation confidential to the extent possible or as required by law.

- C. Granting/Denying a Hearing. The investigative team will determine whether or not there is enough information available to grant a hearing. If the investigative team determines that a hearing should be granted, notice of that determination will be delivered, concurrently, to both parties and to the Student Title IX Coordinator. If a hearing is denied, a notification summarizing the investigative report will be distributed concurrently, to the parties and to the Student Title IX Coordinator.

The investigative team may specify which alleged violations of the Student Code of Conduct, which type or types of sexual misconduct and, if applicable, which other, related alleged misconduct (as described in Section I.B above or the current Student Code of Conduct) will be reviewed by the Panel during the hearing. Concurrently with the delivery of the investigators' notice of a determination, the investigative team may, where the alleged sexual misconduct is sufficiently serious in their reasonable discretion, suggest to the Student Title IX Coordinator that interim measures be taken and may suggest what those interim measures should be, if not already in place.

If the accused student has been placed on an interim suspension (in accordance with Article IV(C) of the Student Code of Conduct), the Panel will use all information that is provided to the administration (in lieu of an investigative report) in addition to any subsequent information received, as the basis for any sexual misconduct allegation.

A complainant whose request for a hearing is denied, and an accused student whose records have been placed on hold, may appeal that decision to the Dean of Student Affairs, whose decision will be final.

If the case involves a reluctant complainant and the investigative team has granted a hearing, the investigative team will present information to the Panel in place of the complainant. The team may have the option to pursue an informal resolution (see Article V below) with the approval of the Student Title IX Coordinator.

- D. Complainant Changes Election to Informal Resolution; Accused Student Elects to Accept Responsibility. Upon receipt of the investigative report, the complainant may decide to elect Informal Resolution instead of Formal Resolution, by submitting a written request to the Student Title IX Coordinator prior to the hearing date. At any time prior to the hearing, the accused student may elect to acknowledge his or her actions and take responsibility for the alleged sexual misconduct. In such cases, the Panel Chair will propose a resolution to the complainant and a sanction. If both the

complainant and the accused student agree to such proposed sanction, the complaint is resolved without a hearing and both parties will waive their rights an appeal. If either the complainant or the accused student objects to the proposed sanction, a hearing before the Panel will be convened for the exclusive purpose of determining a sanction, which determination is subject to appeal pursuant to Section IV.G.13 below. For purposes of this sanction hearing, all of the other provisions of this process relating to the imposition of a sanction for sexual misconduct shall apply (including, for example, the provision for an Impact Statement (see Section IV.G.10), and the provisions governing the effective date of the sanction).

- E. Notice of Hearing; Challenges to Panel; Delivery of Notice. If a hearing is granted by the investigators or occurs as a result of an interim suspension, or is granted by the Dean of Student Affairs on appeal (as stated in IV(C) above), the Panel Chair will commence the Formal Resolution process by providing written notice to both parties (the "Notice of Hearing") stating: (1) the date, time, and place of the pre-hearing meeting at which preliminary matters will be discussed, as more fully addressed in Section IV.G.2, below; and (2) the names of the Panel members selected to serve as the Panel. A party wishing to challenge the participation of any Panel member must notify the Panel Chair, in writing, within five (5) business days of the scheduled hearing date stating the specific reason(s) for the objection. Failure to do so will constitute a waiver of any objection to the composition of the Panel. If a party wishes to challenge the participation of any panel member, and notifies the Panel Chair in writing within the allotted timeframe, the Chair will determine whether the challenge has merit and reserves discretion to make changes in the Panel composition at any time. The Notice of Hearing will be delivered, at the Panel Chair's discretion, by email or in person, and will be considered effective immediately upon receipt. The parties are expected to cooperate in the scheduling of the hearing. If either party fails to appear at the scheduled hearing, the Panel Chair may postpone the proceedings or direct that the Panel proceed and determine the complaint on the basis of the investigative report and any other available information, provided the absent party was given appropriate notification of the scheduled hearing date, as outlined in this section.
- F. Advisors to the Parties. Both the complainant and the accused student may request an advisor be present to support and assist them during the pre-hearing, hearing, and appeal stages of the Formal Resolution process. Outside legal counsel may be allowed at the discretion of the Panel Chair, however their role is limited. (see Section IV.G.4, below, for a description of the role outside counsel may play during a hearing). The Panel Chair may disallow a particular advisor in cases where such adviser might be a witness or where such advisor's presence, in the Panel Chair's sole determination, would be obstructive to the process or for other good cause. An advisor may not direct questions to the Panel of witnesses at the hearing, but may consult with the student that he or she is assisting. The Panel Chair will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

## G. Hearing Procedures

1. Pre-Hearing Submissions. The parties will provide the Panel Chair with a list of witnesses they propose to call, and copies of documents and a description of any other information they propose to present at the hearing, on or before a date set by the Chair. Evidence of the complainant's past sexual history will not be permitted at the hearing unless it is relevant to the complaint. The Chair will provide each party with a copy of the list of witnesses, and identification of copies of documents or other information submitted by each party. In the absence of good cause, as determined by the Chair in his or her sole discretion, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided to the Chair by this deadline. The parties are also responsible for the attendance of their witnesses at the hearing.
2. Pre-Hearing Meeting and Determination of Complaint and Witnesses. The Chair will schedule a pre-hearing meeting prior to the hearing date. At the meeting, the Chair will review hearing procedures with the parties, separately or jointly, at the discretion of the Chair. The Chair will also review the complaint of alleged sexual misconduct (and related misconduct, if applicable), and review the parties' respective lists of proposed witnesses to assist them in eliminating redundant information. The College reserves the right, through the Chair, (a) to add to or modify the alleged violations specified by the investigators, pursuant to Section IV.C, above, at the pre-hearing meeting, and (b) to add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing.
3. Pre-Hearing Discussion. Once a Panel member has been named to a Panel, he or she may not publicly or privately discuss the merits of the complaint with anyone not involved in the proceedings, with the parties themselves, or with anyone acting on the behalf of the parties. The Chair will provide the panelists with a copy of the Notice of Hearing, the investigative report, and the list of witnesses submitted by the parties with an instruction to avoid any public or private discussion of the merits of the complaint.
4. Legal Counsel. Legal counsel may be present (at the expense of the individual parties) at the hearing on behalf of either party. Such counsel may privately consult with and advise the parties during the proceeding, but may not question witnesses, address the Panel or otherwise directly participate in the hearing.
5. Conduct of the Hearing. The hearing will not follow a courtroom model, and formal rules of evidence will not be observed. Accordingly, for example, the parties may elect to rely upon the statements of witnesses contained in the investigative report if such witnesses are unavailable to attend the hearing. The Chair will determine the order of the witnesses (if any) and resolve any questions of procedure arising during the hearing, if any. The parties are

responsible for ensuring that their proposed witnesses are present. Members of the Panel will review in advance of the hearing all the written materials provided to them by the Chair in accordance with Section IV.G.1, above. The parties will have received or been provided the opportunity to review all available materials during earlier stages of the pre-hearing process. The parties will be expected not to repeat undisputed details or non-material circumstances that would merely duplicate information contained in the investigative report or in other written materials. Only the Chair and the Panel may question the individual parties and any witnesses, unless permission is granted by the Chair to modify the questioning process provided the modification does not result in an adversarial tone. Both parties and their advisers may ask the Chair to pose additional questions or inquire further into specific matters by submitting these requests in writing, at the discretion of the Chair. If necessary, a brief break may be granted to allow both parties an opportunity to prepare and submit such requests. The Chair is empowered to disallow or reframe any questions that are irrelevant or redundant. After all witnesses have been questioned, each party may make a closing statement and request a short recess to prepare it. If the Panel determines that unresolved issues exist that would be clarified by the presentation of additional information, the Chair may suspend the hearing and reconvene it in a timely manner to receive such additional information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other information that should have been presented at the pre-hearing meeting.

A Student IX Coordinator or Deputy Student Title IX Coordinator may attend any Provision 4 Hearing at any time to observe the hearing. If the Student Title IX Coordinator or the Deputy Student Title IX Coordinator did not directly participate in the investigation, then their presence in the hearing shall be for the purpose of observation only.

6. Testimony or Participation by the Accused. The accused student has the option not to testify; however, the exercise of that option will not preclude the Panel from proceeding and determining the complaint on the basis of the investigative report and other available information. In addition, as indicated in Section IV.E, above, if the accused student fails to appear at the hearing, after being duly notified of its place and time, the Panel will proceed with the scheduled hearing and make a determination on the basis of the investigative report and any other available information.
7. Testimony via Electronic Technology. Upon timely request by a party or witness, the College may be able to make arrangements (in appropriate circumstances) where parties or witnesses are otherwise unable to participate in the hearing via electronic means. The availability of testimony via electronic technology will be at the sole discretion of the Chair.

8. Recording. The hearing will be digitally recorded and is the sole official verbatim record of the hearing for the purposes of FERPA.
9. Standard of Proof. The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged sexual misconduct under a "*preponderance of the evidence*" standard and that is the standard adopted by this process. A preponderance of the evidence means that the information shows that it is "*more likely than not*" that the accused student violated College policy. In the context of a hearing, the accused student will be found to be responsible for the alleged sexual misconduct if the Panel, by a majority vote, concludes that such sexual misconduct more likely than not occurred based upon careful review of all information presented. In making its determination, the Panel shall carefully consider all of the information presented and follow the procedures stated in this process in order to ensure as fair a hearing as possible for all parties.
10. Impact Statement. If the Panel determines that the accused student is responsible for sexual misconduct, e.g., that the sexual misconduct "more likely than not" occurred, both the complainant and the responsible student may present the Panel with a statement recommending a sanction (the "impact statement") for consideration by the Panel. The Panel is not bound by these statements in determining a sanction. Witnesses other than the parties may be allowed to provide a written character statement to the Panel during the Sanction Phase of the hearing. The Chair may determine, in his or her sole discretion whether portions of any written impact statement should be redacted because of the inflammatory or inappropriate nature of those statements.
11. Sanction. The Panel is required to consider suspending, dismissing, or expelling any student found responsible for sexual misconduct; however, the Panel may impose any sanction that it finds to be fair and proportionate to the violation. In determining an appropriate sanction, the Panel may consider any record of past violations of the Student Code of Conduct, as well as the nature and severity of such past violation(s). The Panel will also consider, as part of its deliberations, whether the sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the complainant and the College community. The sanction decision will be made by the Panel by majority vote. Any sanction imposed will be explained or supported in the written decision of the Panel.

12. Decision. The decision of the Panel, including the sanction, if applicable, will be announced to both parties, concurrently, by the Chair at the conclusion of the hearing. In addition, the Chair will provide a copy of the Panel's decision described in Section IV.G.15, below, to both parties, concurrently, and to the Student Title IX Coordinator, within five (5) calendar days following the conclusion of the hearing (or longer if the Chair determines there is good cause).
13. Appeals. Either party may appeal the Panel's decision by notifying the Chair of the Panel in writing within five (5) calendar days of the date of the Panel's decision. All appeals will be governed by the procedures stated in the Student Code of Conduct, unless otherwise stated under this process.
14. Effective Date of Sanction. Sanctions imposed by the Panel become effective immediately until the resolution of any timely appeal of the Panel's decision. The Provost (or his or her designee) may suspend the determination pending exhaustion of any appeals by the accused student pursuant to Section IV.G.13, above, or may allow the accused student to attend classes or to engage in other activity on a supervised or monitored basis, or may make such other modifications to the determination as may be advisable in the sole discretion of the Provost (or his or her designee). The Provost's (or his or her designee) decision may not be appealed.
15. Privacy of the Hearing Process; Final Outcome Letter. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the investigative report, the Notice of Hearing, and the pre-hearing submissions referenced in Section IV.G.1, above), written statements, testimony, or other information introduced at the hearing, and any transcript of the hearing itself, may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law.

In addition to complying with Title IX and FERPA, the College is required to comply with the Clery Act. Under the Clery Act, both the complainant and the accused student must be informed of the hearing outcome, and the College may not impose any limitations on the re-disclosure of this information. Accordingly, following the hearing, the Panel will issue a written decision letter (the "Final Decision Letter"), concurrently to both the accused student and the complainant. The Final Decision Letter will set forth, as required by the Clery Act, the name of the accused student; the violation(s) of the Student Code of Conduct for which the accused student was found responsible, if any; any essential findings supporting the Panel's decision on the issue of responsibility; and the sanction imposed, if any. College policy neither encourages nor discourages the further disclosure of the Final Decision Letter by either the complainant or the accused student.



The College acknowledges that sharing the Final Decision Letter with others, including family, friends, legal counsel, mental health professionals, and sexual assault advocates or victims, may be a critically important part of a student's healing process.

## V. INFORMAL RESOLUTION

A complainant who wishes to file a formal complaint with the Student Title IX Coordinator but who does not wish to pursue Formal Resolution, or an investigative team (in place of a reluctant victim) may request a less formal process, known as "Informal Resolution," as more particularly described in this section.

Although less formal than Formal Resolution, Informal Resolution is an appropriate resolution process; it is not mediation. The accused student is expected to attend the Informal Resolution proceeding, but is not required to participate.

- A. Purpose of Informal Resolution. Informal Resolution provides an opportunity for the complainant to confront the accused student, in the presence of, and facilitated by, a presiding officer, as described in Section V.B, below, and to communicate his or her feelings and perceptions regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The accused student will have an opportunity to respond.
- B. Advisors; Presiding Officer. The complainant and the accused student each may bring an advisor to the Informal Resolution. Advisors are assigned and subject to the same restrictions set forth for advisors in Formal Resolution, outlined above. The Panel Chair or a designee of the Chair will preside over the Informal Resolution, and may elect to be assisted by another member of the Panel or senior staff representative of the Dean's Office.
- C. Informal Resolution Where Accused Student Acknowledges Responsibility. If, during the course of the Informal Resolution, the accused student elects to acknowledge his or her actions and take responsibility for the alleged sexual misconduct, the Informal Resolution will be concluded and the Panel Chair will propose a sanction. If both the complainant and the accused student agree to such proposed sanction, the complaint will be resolved without any further rights of appeal by either party. If either the complainant or the accused student objects to such proposed sanction, a hearing before the Panel will be convened for the exclusive purpose of determining a sanction, which determination is subject to appeal pursuant to Section IV.G.14. For purposes of this sanction hearing, all of the other provisions of this process relating to the imposition of a sanction for sexual misconduct shall apply (including, for example, the provision for an impact statement, and the provisions governing the effective date of the sanction).

- D. Informal Resolution Where Accused Student Contests Responsibility. If the accused student contests the complaint of alleged sexual misconduct, the Dean, the Dean's designee or the Student Title IX Coordinator may nevertheless impose a protective order agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution proceedings, taken together with any other relevant information known to the College at the time of the Informal Resolution.
  
- E. Election of Formal Resolution. The College or the complainant may, at any time prior to the conclusion of the Informal Resolution, elect to end such proceedings and initiate Formal Resolution instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the subsequent Formal Resolution.
  
- F. Privacy of Informal Resolution. In order to promote honest, direct communication, information disclosed during Informal Resolution must remain private while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

## **VI. AMENDMENTS**

This Policy may be amended, in writing, by the Student Title IX Coordinator at any time. The College will maintain the most updated process on the web at all times.

*Updated: August 17, 2015 ct*