

## **Equal Employment Opportunity & Nondiscrimination Statements, Policies, and Procedures**

Blackburn College is an Equal Opportunity Employer. Blackburn College does not discriminate against anyone on the basis of sex, race, age, color, religion, creed, ancestry, national origin, marital status, sexual orientation, gender identity or expression, physical or mental disability, or military service, including veteran status or discharge from military service (except dishonorable discharges), medical condition, genetic characteristics, pregnancy, or any other basis prohibited by applicable federal, state or local law. This applies to hiring, promotion, renewal of employment, selection for training, tenure or term, and privileges or conditions of employment as well as admission and access to education programs and activities. The College will reasonably accommodate an individual's physical or mental disability when appropriate, as required by the Americans with Disabilities Act and the Illinois Human Rights Act or any other applicable law or regulation.

Members of the College community, guests and visitors have the right to be free from all forms of discrimination or harassment based on a protected classes listed above. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College believes in zero tolerance for discrimination and harassment-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a Responding Party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and establish a mechanism for determining when those expectations have been violated.

The College's discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom.

The College uses the preponderance of the evidence (also known as "more likely than not") as the standard of proof when determining whether a violation of this policy occurred. In campus resolution proceedings, criminal legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but the College never assumes a Responding Party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

### **Title IX**

Title IX provides that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Further information about Title IX can be found at

<http://www.justice.gov/crt/about/cor/coord/titleix.php>

It is the responsibility of Blackburn College to take immediate and effective corrective action if the College has notice of a sexually hostile environment or gender-based harassment. Blackburn College has notice if a Responsible Employee knew, or in the exercise of reasonable care, should have known about the harassment. In these cases, Blackburn College will take the following corrective actions:

- Eliminate the harassment and hostile environment
- Prevent its recurrence
- Address its effects

In addition to this Policy, the College has adopted the Title IX Sexual Harassment Policy and Procedures. Complaints of Sexual Harassment under Title IX will be addressed following the Title IX Sexual Harassment Policy and Procedures. All other complaints under Title IX will be addressed under this policy. The Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees will determine which policy applies to each complaint.

### **Reporting Policy Violations**

Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College's Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees.

The College's Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees and Human Resources Designee oversee compliance with all aspects of thenondiscrimination policy. The Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees are accountable to the President of the College. Questions about this policy should be directed to either the Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees. The Human Resources Designee will generally focus on compliance with this policy for employees, but may still be contacted with regard to other concerns in the Title IX Coordinator's absence.

### **Title IX Coordinator, Deputies, and HR Designees Contact Information**

Title IX Coordinator – **Margaret Lawler** – Ludlum 110, 217-854-5519,  
[margaret.lawler@blackburn.edu](mailto:margaret.lawler@blackburn.edu)

Deputy Coordinator (Student Life) – **Al Sturgeon** – DCC 134, 217-854-5582,  
[al.sturgeon@blackburn.edu](mailto:al.sturgeon@blackburn.edu)

Deputy Coordinator (Work Program) – **Jody Sturgeon** – DCC 115, 217-854-5536,  
[jody.sturgeon@blackburn.edu](mailto:jody.sturgeon@blackburn.edu)

Deputy Coordinator (Athletics) – **Mike Neal (Interim)** – Woodward 113, 217-854-5699,  
[mike.neal@blackburn.edu](mailto:mike.neal@blackburn.edu)

HR Designee – **Marshall Petty** – Ludlum 209, 217-854-5514, [hr@blackburn.edu](mailto:hr@blackburn.edu)

The Title IX Coordinator's, Deputy Coordinator's, and Human Resources Designee's contact information is also located inside on thebulletin board in the west door of Ludlum Hall, and other buildings around campus.

In the event an incident involves alleged misconduct by the Title IX Coordinator or HR Designee, reports should be made directly to the President of the College.

### **Responsible Employees**

All staff, faculty, and students in the Work Program are considered Responsible Employees and therefore are required to report violations of this policy to the Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees. Responsible employeescannot maintain confidentiality because they are required to report Sexual Harassment to the Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees. A Responsible Employee **does not** include students who are not participating in the Work Program, staff counselors, or professional staff members employed by Fresh Ideas.

In essence, almost all members of the College community are considered Responsible Employees. The Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees are also considered Responsible Employees and cannot ensure confidentiality.

### **Confidential & Anonymous Reporting**

The only employees who are NOT mandated to report violations of this policy are the Director of Counseling Services and other College Counselors. These employees serve as confidential resources for Complainants and can provide options for off-campus resources.

Confidential Reporting options may be contacted as follows:

- Director of Counseling Services - Tim Morenz  
Lumpkin 121  
[tim.morenz@blackburn.edu](mailto:tim.morenz@blackburn.edu)  
217-854-5759

Additionally, anonymous reports can be made by victims and/or third parties using the Campus Conduct reporting hotline at 866-943-5787, or the online form available at: <https://blackburn.edu/titleixreports/>. However, the anonymity of the report may hinder the College's ability to respond by providing supportive measures or undertaking the grievance process.

### **Other Reporting Options**

Individuals may also report incidents of Sexual Assault, Domestic Violence, Dating Violence, or Stalking to the College's Department of Safety at 217-854-5550.

Individuals also have the option of contacting local law enforcement if they believe they have been the victim of a crime, such as Sexual Assault, Domestic Violence, Dating Violence, or Stalking. In an emergency, individuals should call 9-1-1. Individuals may also contact the Carlinville Police Department by calling 217-854-3221.

Students experiencing harassment or discrimination may also file a formal grievance with government authorities:

Office for Civil Rights (OCR)  
Chicago Office  
U.S. Department of Education Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, IL 60661-4544  
Telephone: (321) 730-1560  
Fax: (321) 730-1576  
Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)  
Web: <http://www.ed.gov/ocr>

## **I. Prohibited Conduct and Definitions**

### **A. Harassment Policy**

The College prohibits harassment, including sexual harassment, of any kind based on an individual's sex, race, age, color, religion, creed, ancestry, national origin, marital status, sexual orientation, physical or mental disability, or military service, including veteran status or discharge from military service (except dishonorable discharges), medical condition, genetic characteristics, pregnancy, or any other basis prohibited by applicable federal, state or local laws, and will take appropriate and immediate action in response to complaints or violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate, bully or coerce an employee, student, co-worker or any person working for or on behalf of the College. Verbal taunting (including racial and ethnic slurs) that, in the employee's opinion, impairs his or her ability to perform his or her job is included in the definition of harassment.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding any of the protected classes listed above, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group on the basis of the protected classes listed above.

Harassment may also include other misconduct, like threatening behavior, intimidation, hazing, or bullying if such behavior is based on any of the protected classes listed above. Reports of such behavior will be handled in accordance with the policy and the applicable procedures. Threatening behavior, intimidation, hazing, or bullying that is not based on any of the protected classes listed above is still prohibited by the College, but will be handled in accordance with the respective student handbook or faculty and staff handbooks. For purposes of this policy, the following definitions apply:

#### **i. Threatening Behavior**

Is defined as causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

#### **ii. Intimidation**

is defined as implied threats or acts that cause an unreasonable fear of harm in another;

#### **iii. Hazing**

is defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

#### **ix. Bullying**

is defined as the use of force, threat, or coercion to abuse, intimidate, or aggressively dominate others. The behavior is often repeated and habitual. One essential prerequisite is the perception, by the bully or by others, of an imbalance of social or physical power, which distinguishes bullying from conflict. Behaviors used to assert such domination can include, but are not limited to the following forms:

- Verbal harassment or threat
- Physical assault or coercion

- Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating or intimidating
- Work interference or a form of sabotage that prevents work from getting accomplished
- And such acts that may be directed repeatedly towards particular targets

Bullying can include chronic teasing, threats and intimidation; aggressive voicemails, phone calls, emails, and/or social media; ignoring/interrupting; abusive and offensive remarks; yelling, screaming and/or cursing; unwarranted threatening of poor performance or class reviews, persistent name-calling, pushing, shoving, and throwing things; or socially or physically excluding or disregarding a person in work-related activities.

### **B. Sexual Misconduct Policy**

The College also prohibits Sexual Misconduct, which includes the following:

- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Exploitation
- Threatening behavior, intimidation, hazing, or bullying if based on sex or gender

This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. For reference to the pertinent state statutes on sex offenses, please visit <http://www.ilga.gov/legislation/ilcs/ilcs.asp>.

The College will take appropriate and immediate action in response to complaints or violations of this policy. For purposes of this policy, the following definitions apply.

Sexual Harassment as defined by the Title IX Sexual Harassment Policy and Procedures will be addressed under the Title IX Sexual Harassment Policy and Procedures. Complaints of sexual harassment that do not meet the definition and scope set out in the Title IX Sexual Harassment Policy and Procedures will be addressed under this Policy. The Title IX Coordinator, Deputy Coordinators, and/or Human Resource Designees will make the determination regarding which policy applies to each complaint. If you have questions regarding the applications of these policies, contact the Title IX Coordinator, Deputy Coordinators, and/or HR Designees using the contact information provided above.

#### **i. Sexual Harassment**

For the purposes of this Policy, sexual harassment is:

- Unwelcome,
- Sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator, Deputy Coordinators, or HR Designees. Remedies, education and/or training will be provided in response.

Sexual harassment will be disciplined when it takes the form of quid pro quo harassment and/or creates a hostile environment.

For the purposes of this Policy, a hostile environment is created when sexual harassment is:

- Sufficiently severe, or
- Persistent or pervasive, and
- Objectively offensive that it:
- Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational [and/or employment], social and/or residential program.

A hostile environment may arise when unwelcome conduct of a sexual or gender-based nature affects a person's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational, work, and/or living environment. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, create a hostile environment.

For the purposes of this Policy, Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's education [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

**Examples of potential Sexual Harassment include:**

- An attempt to coerce an unwilling person into a sexual relationship.
- Repeatedly subjecting a person to egregious, unwelcome sexual attention
- Punishing a refusal to comply with a sexual based request.
- Conditioning a benefit on submitting to sexual advances.
- Sexual Assault, Domestic Violence, Violence, Stalking, or Sexual Exploitation.
- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- An employee repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the building in which they both work.
- Explicit sexual pictures are displayed in an employee's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in his/her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. He/she probes for explicit details, and demands that students answer him/her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

**ii. Sexual Assault**

For the purposes of this Policy, Sexual Assault is:

- Any intentional sexual touching, however slight, by a person upon another person, that is without consent

and/or by force.

For the purposes of this Policy, sexual contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

Sexual Assault includes, but is not limited to:

- Touching of the private parts of another person for the purpose of sexual gratification, without the effective consent of that person;
- Penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's effective consent;
- Sexual Intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, or
- Sexual intercourse with a person who is under the statutory age of consent.

### **iii. Domestic Violence**

For the purposes of this Policy, Domestic Violence is a felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Example – Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

### **iv. Dating Violence**

For the purposes of this Policy, Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based on the Reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Example – One partner shoves the other partner into a wall upon seeing that partner talking to a friend of the opposite sex. This physical assault based in jealousy could constitute Dating Violence and be a violation of this policy.

### **v. Stalking**

For the purposes of this Policy, Stalking is

- Engaging in a course of conduct
- Directed at a specific person

- that would cause a reasonable person to feel fear for his or her safety or the safety of others, or suffer substantial emotional distress.

For purposes of this definition:

- “Course of conduct” means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by an action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property;
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; and
- “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

Examples -

- A student repeatedly shows up at another student’s on-campus residence, always notifying the residence hall staff that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
- A professor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently had in class, the professor thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the professor’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 professor 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 College 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.

#### **vi. Sexual Exploitation**

Sexual Exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other Sexual Misconduct offenses.

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

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording or nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms or sexual exploitation.

### **vii. Threatening Behavior, Intimidation, Hazing, and Bullying**

In addition to the above defined terms, Sexual Misconduct may also include other misconduct, like threatening behavior, intimidation, hazing, or bullying if such behavior is based on an individual's sex or gender. Reports of any such behavior will be handled in accordance with this policy and the applicable procedures. Threatening behavior, intimidation, hazing, or bullying that is not based on an individual's sex, gender, or other protected class is still prohibited by the College, but will be handled in accordance with the respective student handbook or faculty and staff handbooks.

For purposes of this policy, the definitions of "threatening behavior", "intimidation", "hazing", and "bullying" provided in the Harassment Policy, located in subsection A, apply.

### **viii. Examples of Potential Sexual Misconduct**

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda 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). Amanda 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 was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill may be responsible for violating the College's Sexual Misconduct Policy. The campus decision-makers could find that the degree and duration of the pressure Bill applied to Amanda is unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Sex without consent is Sexual Misconduct.**
- Ben is a work supervisor at the College. Beth is a new worker in Ben's department. For the past couple of months, Beth has been subjected to hugging, fondling, and offensive comments about her "curvaceous figure" several times by Ben. She has repeatedly tried to communicate her discomfort with this behavior by gently pushing him away, talking about how angry her fiancée would be if he knew about it, and leaving the room when possible. The last straw for Beth was when Ben began conducting entire conversations with her while staring at her chest. **This is a violation of the Sexual Misconduct Policy. Although a direct statement to the harasser that the conduct is offensive and unacceptable clearly puts the harasser on notice that the conduct is unwelcome, such a direct statement is NOT required. Ben should have interpreted Beth's statements and actions as expressing to him that his conduct is unwelcomed and he should cease his actions and comments.**
- Peyton and Jordan were in the break room of their office building with a group of their co-workers joking around and telling stories. Peyton placed his arms around Jordan's waist as they continued their conversation. Jordan removed his hands from her body. A few minutes later, Peyton touched Jordan's butt, stating he did not understand why she was making such a big deal about him touching her. **This is a violation of the Sexual Misconduct Policy. After Jordan removed Peyton's hands from her body, Peyton touched her butt. This behavior constitutes intentional physical contact of a sexual nature.**

### **C. Consensual Relations Policy**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by

the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the college. However, for the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are inappropriate. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor or the Provost, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student or employee out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Advisors (RAs) and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary actions for an employee. Because of the unique nature of the Work Program, student supervisors should refrain from romantic or sexual relationships with student workers who report to them and should not evaluate such student workers.

#### **D. Additional Applicable Definitions:**

##### **i. Consent**

For the purposes of this Policy, Consent is the affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter with a specific individual. Consent is a freely given agreement to sexual activity. Consent must be informed and mutual. Consent is clear, mutually understandable words or actions communicating an agreement to engage in specific sexual or intimate conduct. It is the responsibility of the person initiating sexual activity to obtain the other party's consent before proceeding with the sexual activity.

A current or past dating or sexual relationship, by itself, does not create consent. Consent to sexual activity in the past does not create consent to future sexual activity. Consent to sexual activity with one person does not create consent to sexual activity with another person. Consent to one sexual activity does not create consent to another sexual activity. A person's manner of dress does not constitute consent. Consent can be withdrawn at any time during a sexual encounter.

Consent cannot be given as the result of force, coercion, intimidation, or threats. A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.

Consent cannot be given by one who is unable to understand the nature of the sexual activity and give knowing consent due to the circumstances. This includes when one is incapacitated, voluntarily or involuntarily, due to a physical condition, including, but not limited to, the use or influence of drugs or alcohol, or being in a state of unconsciousness, sleep, or other state in which the person is unaware that sexual activity is occurring. If there is any doubt as to another person's capacity to give consent, community members should assume that the other person does not have the capacity to give consent.

A person also cannot consent if he or she is under the age of consent or if the person is incapacitated due to a mental disability.

## **ii. Force**

Force is 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 overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Ok, don’t hit me, I’ll do what you want.”)

- Coercion is unreasonable pressure for sexual activity. 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: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual activity is not by definition forced.

## **iii. Hostile Environment**

A hostile environment may arise when unwelcome conduct of a sexual or gender-based nature affects a person’s ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational and/or living environment. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, create a hostile environment.

This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. For reference to the pertinent state statutes on sex offenses, please visit

<http://www.ilga.gov/legislation/ilcs/ilcs.asp>.

## **E. Anti-Retaliation Policy**

Retaliation against anyone involved in a case or report of discrimination or harassment of any kind, including Sexual Misconduct, is prohibited.

Examples of retaliation include, but are not limited to:

- Unfair assignment, grading or evaluation
- Having information withheld or made difficult to obtain in a timely manner, such as class information, grades or work assignments
- Ridicule (public or private)
- Oral or written threats or bribes
- Refusal to meet with the person even though the person has a right to do so
- Further harassment

Such retaliation shall be considered a serious violation of the policy and shall be independent of whether a charge or informal complaint of discrimination or harassment is substantiated. Encouraging others to retaliate also violates the policy. Any incidents of retaliation should be immediately reported to the Title IX Coordinator, Deputy Coordinators, or HR Designees.

## **II. Grievance Procedures**

Formal Complaints of Sexual Harassment under the Title IX Sexual Harassment Policy and Procedures will be addressed by the grievance process set out in the Title IX Sexual Harassment Policy and Procedures.

This process begins when *notice* is received. Then a prompt preliminary inquiry by the Title IX Coordinator, Deputy Coordinators, or Human Resources Designee is held to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If reasonable cause is found to support the claim, the College

will initiate an investigation which will lead to either an informal or formal resolution process. The Title IX Coordinator, Deputy Coordinators, or Human Resources Designee will coordinate the College's compliance efforts regarding all reports and will promptly implement an effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

**Notice:** The College has notice of Sexual Misconduct, harassment, or discrimination based on the protected classes (for list, see paragraph 1 of the Equal Employment Opp. & Title IX Nondiscrimination Policy) if a Responsible Employee knew, or in the exercise of reasonable care should have known, about the Sexual Misconduct, harassment, or discrimination. The school can receive notice in several ways. Some examples of notice include: a student or employee filing a grievance, an individual (student, parent, employee, or friend) reporting an incident, or a Responsible Employee witnessing the event. It also can indirectly receive notice from a member of the local community, on a social networking site, or from the media.

Additionally, notice may be imputed onto the school if the pervasiveness of the alleged misconduct is "widespread, openly practiced, or well-known among students." The school is required to take prompt and effective corrective action in these instances.

Public awareness events, such as "Take Back the Night," are not considered notice to the school for the purpose of triggering individual investigation. However, the Department of Education does recommend that schools provide information at these events on how to file a Title IX complaint.

In private lawsuits for monetary damages, the school must have had actual knowledge of the conduct and act with deliberate indifference. Under Title IX and its regulations, as well as under Title IV, once a university has actual or constructive notice of possible sexual harassment of students, it is responsible for determining what occurred and responding appropriately. When a university fails to take adequate steps to address harassment, it is held liable under Title IX and Title IV for its own conduct.

The College aims to bring all allegations to a resolution within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, Deputy Coordinators, or Human Resources Designee with notice to the parties. In overview, the timeline for resolution begins with notice to a **Responsible Employee**, who then should make a report to the Title IX Coordinator, Deputy Coordinators, or Human Resources Designee.

**Responsible Employee:** Includes any employee who: 1. has the authority to take action to redress the harassment or discrimination; 2. has the duty to report harassment, discrimination or other types of misconduct to appropriate officials; OR 3. is someone a person could reasonably believe has this authority or responsibility. A Responsible Employee does not include students who are not participating in the Work Program, peer counselors, staff counselors, the college chaplain, or professional staff members employed by Fresh Ideas. In essence, almost all members of the College community are considered a Responsible Employee.

The Title IX Coordinator, Deputy Coordinators, or Human Resources Designee then engages in a **preliminary inquiry** that is typically 1-3 days in duration.

**Preliminary Inquiry:** When a notice is made, the Title IX Coordinator, Deputy Coordinators or Human Resources Designee will address inquiries and coordinate the College's response. Often, sex and gender-

based complaints and other discrimination complaints, include other potential College policy violations. If the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee believes that reasonable cause is not found to support the claim, the case will be closed and all parties will be notified. If reasonable cause is found to support the claim, an investigation will be initiated and either an informal resolution or a formal resolution will take place. Prompt filing of a complaint is strongly encouraged. A complaint may be withdrawn at any time after it is filed. However, withdrawal of a complaint will not necessarily result in the termination of the College's inquiry or investigation.

At the end of the preliminary inquiry, the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee will assign at least two investigators to begin an *investigation* and keep all parties regularly apprised of the status of the investigation as it unfolds. Once an investigation has been launched, the *Reporting Party* and *Responding Party* have the right to find an *advocate* to support him/her through this process and it will be determined if either an informal or formal resolution will take place.

**Investigation:** An investigation can range from days to weeks in length, depending on the nature and complexity of the allegation, with the College commonly aiming for a 10-14 day window for completion of the investigation. The College will conduct a prompt, fair, and impartial investigation. Prompt means that the investigation is completed within reasonably prompt timeframes, generally within sixty days. Fair means that the investigation is conducted in a manner that is consistent with this policy and transparent to the Reporting and Responding Parties. Impartial means the investigation is conducted by individuals who do not have a conflict of interest or bias for or against either party, and who are trained on issues related to all forms of discrimination, harassment, and Sexual Misconduct and in conducting an investigation. In cases of academic freedom, the investigation must include the appropriate academic officer.

**Reporting Party:** In this process, the recipient or victim of the alleged misconduct is referred to as the Reporting Party. While an individual who is not the recipient or victim of the alleged misconduct may certainly notify the College of the alleged misconduct, reference to Reporting Party throughout this policy is limited to the recipient or victim of the alleged misconduct.

**Responding Party:** In this process, the person who is alleged to have violated campus policy is referred to as the Responding Party.

**Advocates:** A person, of each party's choosing, who can help guide, support and accompany them throughout the campus resolution process. This person can be, but is not limited to a friend, family member, mentor, or supervisor. An advisor cannot be anyone who is directly involved in the resolution process.

#### **A. Filing a Grievance**

Any member of the community can provide notice of discrimination and/or harassment in person, by phone, via email or in writing to the Title IX Coordinator, Deputy Coordinators, or Human Resources Designee. The College strongly encourages submission of written reports to either the Title IX Coordinator, Deputy Coordinators, or to Human Resources Designees

The following are recommended elements of a report:

- Clear and concise description of the alleged incident(s) (e.g.: when and where it occurred);
- Any supporting documentation and evidence including witnesses if any;

- Clear demonstration of all informal efforts, if any, to resolve the issue(s) with the person involved and the person's supervisor;
  - This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort;
  - If contacting the person involved and/or the supervisor is inappropriate, the Reporting Party should state the reasons why;
- The desired remedy sought;
- Name and all contact information for the Reporting Party;
- Signed and dated by the Reporting Party.

Upon receipt of a report of Sexual Misconduct, the Title IX Coordinator, Deputy Coordinator, or HR Designee will provide the Reporting Party with the following information in writing:

- Information about the importance of preserving physical evidence in cases of sexual violence and the availability of a no-cost medical forensic exam;
- Information about the Reporting Party's Rights and Options related to reporting and support that may be available from the College as well as his/her options regarding the involvement of law enforcement, including personally notifying law enforcement, receiving assistance from the College in notifying law enforcement, or declining to notify law enforcement;
- Information about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims both within the College and in the community;
- Options for interim remedies;
- A copy of this policy.

**B. Interim Remedies/Actions During an Investigation, Resolution Process, and Subsequent Appeals**

The Title IX Coordinator, Deputy Coordinator, or Human Resources Designee may provide interim remedies intended to address the short-term effects of alleged harassment, discrimination and/or retaliation, i.e., to redress harm to the Reporting Party and the community and to prevent further violations. The College will keep interim remedies and actions as private as possible.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the campus community
- Altering the housing situation of the Responding Party or the housing situation of the Reporting Party, if desired
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Make arrangement to offer adjustments to academic deadlines, course schedules, etc.

Interim remedies will be provided if they are reasonably available and requested, regardless of whether the Reporting Party chooses to report the alleged Sexual Misconduct, discrimination, or harassment to Campus Safety and Security or local law enforcement. Any interim remedies provided will be kept confidential to that extent that doing so will not impair the ability of the College to provide the remedy.

In addition to providing interim remedies, the College may, in the interim, suspend a student, employee, or organization pending the completion of the investigation, resolution process, or subsequent appeals. This is particularly important when, in consultation with the Dean of Students or Human Resources Designee who will consult with the President and the Provost, the Title IX Coordinator finds the safety or well-being of any member(s) of the campus community to 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 opportunity to meet with the Title IX Coordinator, the Dean of Students or the Human Resources Designee prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause of why the suspension should not be implemented. The Title IX Coordinator, the Dean of Students or the Human Resources Designee have discretion to implement or stay an interim suspension under the previous section of the Equal Employment Opportunity & Nondiscrimination Statements, Policies, and Procedures and to determine its conditions and duration.

Violation of an interim suspension or other remedy provided under this policy is grounds for discipline, up to and including expulsion or termination.

### **C. Participation of Advocates in the Investigation, Resolution Process, and Subsequent Appeals**

All parties are entitled to an advocate of their choosing to guide and accompany them throughout the campus resolution process. The advocate may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is eligible and available. People who will be called as witnesses may not serve as advocates. The goal of the College is to maintain a pool of trained (non-attorney) advocates who are available to the parties. The parties may choose advocates from outside the pool, or outside the campus community, but those advocates may not have the same level of insight and training on the campus process as do those trained by the College. Outside advocates are not eligible to be trained by the College.

The parties are entitled to be accompanied by the advocate in all meetings and interviews at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advocates should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an advocate who is an attorney, but the other party does not, or cannot afford an attorney, the college is not obligated to provide one. However, Responding Parties may wish to contact organizations such as:

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

Reporting Parties 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 advocates are subject to the same campus rules, whether they are attorneys or not. Advocates may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if they wish to interact with campus officials. Advocates may confer quietly with their advisees as

necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advocates should ask for breaks or step out of meetings to allow for private conversation. Advocates will typically be given a timely opportunity to meet in advance of any interview or hearing with the administrative officials conducting that interview or meetings. This pre-meeting will allow advocates to clarify any questions they may have, and allows the College an opportunity to clarify the role the advocate is expected to take.

Advocates are expected to refrain from interference with the College investigation and resolution. Any advocate who steps out of his/her role in any meetings under the campus resolution process will be warned once and only once. If the advocate continues to disrupt or otherwise fails to respect the limits of the advocate role, the advocate will be asked to leave the meeting. When an advisor advocate is removed from a meeting, that meeting will typically continue without the advocate present. Subsequently, the Title IX Coordinator, Deputy Coordinator, or HR Designee will determine whether the advocate may be reinstated, may be replaced by a different advocate, or whether the party will forfeit the right to an advocate for the remainder of the process.

The College expects that the parties will wish the College to share documentation related to the allegations with their advocates. In order for the College to be able to share records with an advocate, the parties must consent to this by signing our authorization form. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advocates are expected to maintain the privacy of the records shared with them by the college. These records may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any advocate who does not respect the sensitive nature of the process or who fails to abide the College's privacy expectations.

The College expects an advocate to adjust his/her schedule to allow him/her to attend College meetings when scheduled. The college does not typically change scheduled meetings to accommodate an advocate's inability to attend. The College will, however, make provisions to allow an advocate who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

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

The parties must advise the investigators of the identity of their advocate before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advocates at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

#### **D. Investigation Process**

An investigation is launched after reasonable cause is determined in the preliminary inquiry by the Title IX Coordinator, Deputy Coordinator, or the Human Resources Designee. An investigation can range from days to weeks in length, depending on the nature and complexity of the allegation or when initial reports fail to provide direct first-hand information, with the College commonly aiming for a 10-14 day window to completion of the investigation.

**Reasonable cause** is a standard of proof. It is applied to a set of facts or actions to prove whether a reasonable person would have come to the same conclusion or acted in the same way given the totality of the circumstances. The standard is part of the tests applied by U.S. courts to police action in criminal matters but has also been applied in certain civil contexts.

The College's resolution 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. However, the College may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and processes once notified by law enforcement that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary. The Title IX Coordinator, Deputy Coordinator, or Human Resources Designee will typically assign two Title IX trained investigators to all investigations, one of which must be the Director of Campus Security and Safety or Designee.

In consultation with the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee, the investigator(s) will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), request any necessary remedial actions;
- Determine the identity and contact information of the Reporting Party;
- Identify the exact policies allegedly violated;
- Meet with the Reporting Party to take and finalize their statement, and
- Prepare the notice of charges on the basis of the preliminary inquiry;
- Meet with the Responding Party to take and finalize their statement;
- 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;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of 10-14 business days;
- Meet with both parties to discuss and determine the desired outcome (informal or formal resolution);
- Provide regular updates to both the Reporting and Responding Parties, as appropriate, throughout the investigation;
- All statements can be read by the Reporting Party and the Responding Party AFTER all statements have been submitted;
- Prepare and present the findings to the hearing body;
- Share the findings and update the Reporting Party and the Responding Party on the status of the investigation.

If the investigators find the claim to be non-violent and both the Reporting and the Responding Parties agree, an informal resolution may take place. If the investigators find the claim to be violent or the Reporting and the Responding Parties do not agree, a formal resolution will take place.

#### **E. Informal and Formal Resolution Processes**

This procedure applies to any member of the College community (faculty, student, staff, and administration) who is accused of engaging in discrimination or harassment, including Sexual Misconduct, except for Formal Complaints under the Title IX Sexual Harassment Policy and Procedures, which will be addressed by the

grievance process set out in the Title IX Sexual Harassment Policy and Procedures. Any person can report alleged harassment or discrimination, including faculty, part-time faculty, students, staff, administration, guests, visitors, etc. All allegations of misconduct not involving harassment or discrimination will be addressed through the procedures elaborated in the respective student handbook or faculty and staff handbooks.

Reporting and Responding Parties will receive notice of the name of the individual or names of individuals on the Conduct Hearing Board, which will make a finding as to whether a policy violation occurred and impose a sanction if appropriate, before the individual or individuals initiate contact with either party. All parties will have the opportunity to request a substitution if the participation of an individual with authority to make a finding or impose a sanction poses a conflict of interest. Sections H, vi: Additional related Provisions provides direction on how to address conflicts of interest and biases.

**i. Informal Resolution Process**

Before pursuing the Formal Resolution Process, every reasonable effort should be made to constructively resolve conflict with students, faculty, part-time faculty, staff, or administrators. Whenever possible and safe, the problematic behavior, conflict or misconduct should first be discussed by the Reporting Party and the Responding Party. The Title IX Coordinator, Deputy Coordinator, and the Human Resources Designee will facilitate such conversations, upon request, and monitor them for safety. Various conflict resolution mechanisms are available, including but not limited to counseling or *mediation*.

**Mediation:** The attempt to settle a dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result. Mediation is not used when violent behavior is involved, when the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee determines a situation is not eligible, or the parties are reluctant to participate in good faith. Mediators are available from the U.S. Office of Labor Relations and the cost for these services are generally covered by the institution.

The College will not force an informal resolution or if informal resolution efforts are unsuccessful, the formal resolution process will be initiated and both parties will be notified. Either party has the right to end the informal process and begin the formal process at any time prior to resolution. The Reporting Party may keep a written log that could aid in later investigation and resolution.

**ii. Formal Resolution Process**

A formal resolution will be pursued in response to violence being present in the claim, if the Reporting and Responding Parties cannot agree on an informal resolution, or a previously agreed upon informal resolution was not successful.

At the end of an investigation, the assigned investigators will submit their reports to the **Hearing Body** for review. Once the Hearing Body has reviewed the report, the investigators, along with the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee, will meet with the Hearing Body to discuss any further need to investigate or to offer clarification. From there, a hearing will convene to determine if the policy has been violated. The **Conduct Officer** of the Hearing Body will present the Reporting and Responding Parties with the findings, a decision, and sanctions (if applicable), subject to appeal.

**Hearing Body:** A Hearing Body is made up of five members of the campus community. A Hearing Body will always consist of two staff members, two faculty members, and the Conduct Officer all of whom have been appropriately trained. The College will make every effort to maintain a trained pool of hearing body members that reflects the diversity of faculty and staff. In cases where both parties are students, the V.P.

and Dean of Student Affairs will choose the appropriate staff and faculty hearing body members. In cases where both parties are employees, the Provost will choose the appropriate staff and faculty hearing body members. In cases of student and employee parties, the Provost and V.P. and Dean of Student Affairs will collaborate and choose the appropriate staff and faculty Hearing Body members. The Hearing Body will be responsible for reading and understanding all aspects of the investigators' reports; asking appropriate and relevant questions of the investigators, both parties, and any one present at the hearing; making a determination based on the preponderance of evidence standard as to whether a violation of the policy more likely or not occurred; making a prompt, fair, and reasonable decision on the findings; and determining appropriate sanctions. The goal of the College is to enlarge the pool of trained Hearing Body members.

**Conduct Officer:** The Conduct Officer will be a member of the campus community that is appointed by the President. This person will be trained and will typically serve a three-year term. The Conduct Officer will be responsible for leading the hearing and delivering the appropriate sanctions when a policy violation is found. In a case where the Conduct Officer is directly involved, the President will appoint an interim Conduct Officer.

The Hearing Body will take the following steps during a hearing:

- The Conduct Officer will read the charge(s) along with the name(s) of the person(s) or office bringing them.
- All parties present will be reminded that they are to tell the truth throughout the hearing.
- The Responding Party will state whether or not he/she was responsible for the alleged offense(s).
- The Investigators will submit evidence related to the alleged offense(s) or to other actions that led up to or support the allegation as well as providing witnesses who can specifically speak to the alleged offense(s).
- The Reporting and Responding Parties may be asked to present their statements, provide clarification, or answer questions in regard to the claim.
- Witnesses will generally be asked to attend only that portion of the hearing which is relevant to their testimony, although in some cases witnesses may be asked to be present during the entire hearing.
- All parties present are entitled to make notes and ask questions at any time during the hearing, providing they have been recognized by the Conduct Officer. The only exception to this is the advocate(s), who must speak through the person they are present to support. Neither the Reporting Party nor Responding Party may speak directly to one another during the hearing.
- The Hearing Body may recall the Reporting Party, Responding Party, any witnesses, or the investigators at any point to clarify or challenge statements made during the hearing. The Hearing Body members are allowed to ask questions at any point throughout the hearing. All questions and clarifications must be directed to the Hearing Body members. Any member of the Hearing Body may request additional information.
- All hearings are closed to the public and must be held in either a conference room or a classroom. The advocates for the party they are supporting may include members from outside the campus community as both may have reached out to counselors unavailable on out campus; to exclude those individuals' participation in this process could put undue stress and pressure on all. The scope of the witnesses' testimony must be limited to the alleged act of or acts leading up to the alleged policy violation in questions. The sexual history of the Reporting Party is not a relevant part of the Hearing Body's proceeding or deliberations. Character witnesses are also not allowed as they cannot substantiate or invalidate any act of misconduct.

- Decisions will be reached by a majority rule on the basis of the evidence presented during the hearing. If evidence of misbehavior outweighs evidence to the contrary, the Responding Party will be considered responsible for the offense.
- Once the Hearing Body makes a decision regarding whether a violation of policy occurred and what sanctions (if any) will be imposed, the parties will receive written verification of the Hearing Body's decision from the Title IX Coordinator, Deputy Coordinator, or HR Designee as follows:
  - If it is determined that the Responding Party has not violated the policy, notice will be made to all parties.
  - If it is determined that the Responding party has violated the policy, sanctions will be determined and notice will be made to all parties.
  - In all cases, regardless of the findings, the Reporting Party and Responding Party will receive simultaneous written notification of the findings, any resulting responsive actions or sanctions (subject to the following limitations), the rationale for the decision, and the appeals options, along with the procedures for appeal and any changes to the results that could occur before the decision is finalized. If there is a finding that Sexual Misconduct occurred, the Reporting Party will be notified of all responsive actions or sanctions imposed. If there is a finding that discrimination or harassment other than Sexual Misconduct occurred, the Reporting Party will be informed what sanctions, if any, were imposed on the Responding Party if such sanction directly relate to the Reporting Party (e.g., the Responding Party is ordered to stay away from the Reporting Party, is prohibited from attending school or work for a period of time, and/or is transferred to a different office space, residence hall, etc.).
- Once the notice of decision is received in person, mailed or emailed, it will be deemed presumptively delivered.
- Appropriate sanctions could include no further action; completion of counseling programs; social probations, suspension, or expulsion (for students); letter of reprimand; probationary status contingent upon completion of professional counseling and/or job training, or termination of employment (for faculty and staff members). If dismissal is recommended for a tenured faculty member, the process would follow the 1958 AAUP Statement of Procedural Standards in Faculty Dismissal Proceedings. Other appropriate sanctions as determined by the Hearing Body may be applied.
- Either the Responding Party or the Reporting Party may appeal the Hearing Body's decision, within 48 hours excluding weekends, to the Provost. Only appeals based on the criteria established in section F (Appeals Process) will be heard.

**F. Appeals Process**

An appeal of the final decision of the Hearing Body must be made within 48 hours, excluding weekends or dates when the entire College is closed. Any appeals submitted after the 48 hour deadline will not be heard. Appeals may only be requested under the criteria outlined below.

**i. Criteria for Appeal**

The ONLY grounds for appeal are as follows:

1. A procedural [or substantive] error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
2. To consider new evidence not heard 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;
3. The sanctions imposed fall outside the range of listed sanctions and the cumulative conduct history of the Responding Party.

## **ii. Requesting an Appeal**

The decision of the Hearing Body may be appealed by petitioning the Provost. (The V.P. and Dean of Student Affairs would hear an appeal if the Provost were involved in, a witness to a case, or recuses him/herself.) Any party who files an appeal request must do so in writing to the Office of the Provost, within 48 hours (excluding weekends) of the delivery of the written decision, for a review of the decision or the sanctions imposed.

The following are recommended elements of an appeal:

- Clear and concise description of the criteria you wish to appeal;
- Any supporting documentation and evidence;
- Name and all contact information for the appealing party;
- Signed and dated by the appealing party.

A request may be made to the Conduct Officer at the end of the hearing to delay implementation of the sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the student or employee to his/her prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **iii. The Appeal Process**

The Provost can take one of three possible actions: dismiss an appeal request as untimely or ineligible; grant an appeal and remand the finding and/or sanction for further investigation or reconsideration at the hearing level; or modify the sanction. Based on the written requests/responses or on interviews as necessary, the Office of the Provost will send a letter of outcome for the appeal to all parties.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

In cases where a procedural error cannot be remedied by the original Hearing Body (as in cases of bias), the Provost may order a new hearing with a new Hearing Body.

The procedures governing the hearing of appeals include the following:

- All parties should be informed of a timely manner of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- 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 criteria for appeal;
- Appeals decisions are to be deferential to the original Hearing Body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original Hearing Body merely because they disagree with its finding and/or sanctions.
- Sanctions imposed are implemented immediately unless the Conduct Officer stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Provost will typically render a written decision on the appeal to all parties within five (5) business days from hearing of the appeal. The Provost's decision to deny an appeal request is final.

## **G. Confidentiality**

The decision to come forward and report incidents covered in this policy can be difficult, and individuals may want to seek assistance from someone who can provide support and assure that what is disclosed will not be acted upon. Certain individuals can serve as confidential resources and are ethically and legally obligated to keep all information shared with them confidential, except in certain circumstances noted below. Though the College encourages students and employees to bring reports of discrimination, harassment, and Sexual Misconduct to the attention of the College for further investigation pursuant to this policy, individuals who wish to maintain confidentiality may contact the Director of Counseling Services.

While all reports of discrimination, harassment, and Sexual Misconduct made to Responsible Employees must be shared with the Title IX Coordinator or Human Resources Designee, the College will handle information related to alleged violations of this policy and any subsequent investigation and resolution process with sensitivity and discretion. The College will inform the Reporting Party before it begins an investigation. In order to conduct an extensive, fair and impartial investigation, the College may need to disclose information relating to an incident, including the identity of the individuals involved, witnesses and others, and will do so in accordance with this policy and applicable law.

Information related to alleged violations of this policy and any subsequent investigation and resolution process will be treated as confidential and will be shared with others on a need-to-know basis to the extent they are involved in the investigation and resolution process and/or directly responsible for the College's response to the incident. Participants in the investigation and resolution process must keep the content of any interview, investigation, and/or hearing confidential.

When individuals report a violation of this policy but ask that it remain confidential or request that no investigation into the incident be conducted and that no action be taken, the College will take all reasonable steps to investigate and respond while respecting the Reporting Party's request for confidentiality; however, complete confidentiality may not be possible. Individuals should keep in mind that requests for confidentiality limit the ability of the College to investigate the incident and/or pursue disciplinary action against the Responding Party if appropriate.

The Title IX Coordinator, Deputy Coordinators, or Human Resources Designees are responsible for evaluating requests for confidentiality and/or requests that an incident not be investigated. In considering these requests, these individuals may consult with other College employees as appropriate. Factors considered in determining whether or not confidentiality may be maintained include:

- Seriousness of the reported conduct;
- Risk of repeated conduct, including knowledge of other complaints against the Responding Party, history of arrests or reports indicating prior violence of the Reporting Party, and threats of further misconduct against the Reporting Party or others;
- Whether the alleged incident was committed by multiple individuals;
- Whether the alleged incident involved the use of a weapon; and/or
- Whether the complainant was a minor.

There may be times when a request for confidentiality and/or a request that an incident not be investigated cannot be accommodated. When this occurs, the College will, extenuating circumstances aside, inform the Reporting Party prior to the investigation, and will, to the extent possible, only share information on a need-to-know basis with those involved in the investigation and resolution process and/or directly responsible for the College's response to the incident. The Reporting Party will not be

required to participate in the investigation or resolution process.

Whether or not the College can accommodate a request for confidentiality and/or a request that an incident not be investigated pursuant to this policy, the College may still provide interim remedies if they are reasonably available and requested by the Reporting Party. Any interim remedies provided will be kept confidential to that extent that doing so will not impair the ability of the College to provide the remedy.

When complying with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, the College will not include names or other identifying information in publicly available reports.

## **H. Additional Related Provisions**

### **i. College-initiated proceedings**

As necessary, the College reserves the right to initiate a report and to initiate resolution proceedings without a formal report or participation by the victim of misconduct.

### **ii. Alternative Testimony Options**

For reports of Sexual Misconduct, and other reports of a sensitive nature, whether the alleged victim is serving as the Reporting Party or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the Responding Party, such as by Skype or phone.

### **iii. Past Sexual History/Character**

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Conduct Officer, [pertaining only to past or subsequent interactions between the parties that offer context]. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance of the hearing by the Conduct Officer. While previous conduct violations by the Responding Party are not generally admissible as information about the present allegation, the Conduct Officer may supply previous reports of good faith allegations and/or findings to the investigators, the Hearing Body, and the Provost to consider as evidence of pattern and/or predatory conduct.

### **iv. Witness participation in an investigation**

Witnesses are expected to cooperate with and participate in the College's investigation. 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. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person. Parties who elect not to participate in the investigation will have the opportunity to offer evidence during the hearing and/or appeal stages of the process, though failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Any witness scheduled to participate in a 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.

### **v. Training for those implementing these procedures**

Personnel tasked with implementing these procedures, (e.g.: Title IX Coordinator, Deputy Coordinators, HR Designees, investigators, hearing body, advocates, Provost, mediators, etc.) will receive a minimum of 8 to 10 hours of training annually. This training will include, but is not limited to: how to appropriately remedy,

investigate, render findings and determine appropriate sanctions in references to sexual harassment and discrimination allegations in accordance with these policies and procedures; issues related to sexual violence, domestic violence, dating violence, and stalking; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

**vi. Conflicts of Interest and Bias**

The College is committed to ensuring that its Grievance Procedures and appeals process are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition to the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee for the person's removal from the process.

The petition should include specifics as to the actual or perceived bias or conflict of interest and why the petitioner believes the bias or conflict could materially impact the investigation. The Title IX Coordinator or HR Designee will determine whether a conflict of interest or bias exists and will appoint an alternative official if appropriate. Such petitions may also be made to the College president in the event that the potential conflict or bias involves the Title IX Coordinator, Deputy Coordinator, or Human Resources Designee. In that case, the College president will determine whether a conflict of interest or bias exists and will appoint an alternative official if appropriate.

**vii. Recordkeeping**

In implementing these procedures, records of all allegations, investigations, and resolutions will be kept by the Title IX Coordinator or Human Resources Designee indefinitely in an electronic database.

**viii. False Charges**

Due to the serious nature of discrimination and harassment charges, a false charge of discrimination or harassment of any kind shall be considered a serious offense, subject to disciplinary action by the College. Individuals will not be deemed to have provided false or misleading information under this policy if their factual allegations are intended to be truthful and are made in good faith, regardless of whether the conduct complained of is ultimately found to constitute a policy violation.

**ix. Amnesty Provision**

The College's amnesty provision provides immunity to any student or employee who reports, in good faith, an alleged violation of the higher education institution's comprehensive policy to a Responsible Employee, as defined by federal law (and in this handbook), so that the Reporting Party will not receive a disciplinary sanction by the institution for a student or employee conduct violation, such as underage drinking, that is revealed in the course of such a report, unless the College determines that the violation was egregious, including without limitation an action that places the health or safety of any other person at risk.

**I. Resources for Victims of Sexual Misconduct**

The College encourages members of the campus community who are victims of Sexual Misconduct to take the following steps:

- Get to a safe place as soon as possible.
- Contact local law enforcement.
- Do not blame yourself. Sexual Misconduct is never the victim/survivor's fault.
- Seek immediate medical attention at an area hospital or medical clinic.

- If possible, do not change clothes, shower, bathe, douche, or urinate. Emergency room personnel are trained to check for injuries, as well as to collect physical evidence. It is important to preserve evidence as it may be necessary should you decide to pursue criminal charges. Costs for providing and administering the “rape kit” are incurred by the Illinois Department of Public Health.
- Report the Sexual Misconduct to the College, and utilize the College’s resources to seek support. Incidents of Sexual Misconduct are notoriously underreported on college campuses, often because the victims/survivors do not recognize their experience as a criminal offense and/or a college violation or their lack of knowledge of and/or discomfort with campus and community resources. By seeking assistance and reporting Sexual Misconduct, you can begin your own healing process and promote standards of community and respect.

Please be aware that hospital personnel may be obligated to contact proper authorities regarding a sexual assault or other criminal behavior. Although you are not obligated to do so, victim/survivors of Sexual Misconduct are highly encouraged to take advantage of the resources listed below, which can help you understand your options for off-campus proceedings, as well as make you aware of services such as counseling that are specific to your needs. Other options may be available to victim/survivors, such as obtaining an order of protection, no contact order, or restraining order from the court system.

#### **Off-Campus Crisis Hotlines (available 24/7)**

- 800-656-HOPE (Rape, Abuse and Incest National Network)
- 217-753-8081 (Prairie Center Against Sexual Assault)
- 800-799-7233 (Domestic Violence Hotline)
- 800-227-8922 (Sexually Transmitted Disease Hotline 8 a.m.—8 p.m. Monday—Friday)

#### **Individual and Group Counseling**

- 217-854-3166 (Locust Street Resource Center)
- 217-839-1526 (Maple Street Clinic)
- 217-854-4511 (Catholic Charities)
- 217-753-8081 (Prairie Center Against Sexual Assault) Other Help Lines
- 800-552-6843 (U.S. Attorney General for Hate Crime Reports)
- 800-552-7096 (Child Abuse Hotline)

#### **Medical Issues**

- 217-839-1526 (Maple Street Clinic)

#### **Hospitals**

- 217-788-3030 (Memorial Hospital Emergency Room—Rape Exams)
- 217-854-3141 (Carlinville Area Hospital—Internal Medicine—Will Not Do Rape Exams)

#### **Legal Assistance**

- 217-753-4117 (IL Coalition Against Sexual Assault—Springfield)
- 888-259-6364 (Macoupin County Safe Families)
- 217-854-3221 (Police Non-Emergency)

**In the case of an off-campus emergency situation, dial 911.**

*Revisions to the Policy Approved by Faculty and Staff Assemblies Spring 2017*