

## **7009 Sexual Misconduct Policy**

*Adopted by the Alpena Community College Board of Trustees on April 16, 2014.*

*Amended: June 18, 2015; December 19, 2019; August 13, 2020; and August 25, 2023.*

### **I. Policy Summary**

The College supports its educational mission by fostering and maintaining a campus environment based on civility, dignity, diversity, inclusivity, equality, freedom, honesty, and safety. Consistent with these values, the College is committed to providing a safe and non-discriminatory learning, living, and working environment. The College does not discriminate on the basis of sex or gender in any of its education or employment programs and activities.

The College prohibits sexual harassment and sexual violence, including domestic violence, dating violence, sexual assault, retaliation, discrimination on the basis of sex or gender and sexual exploitation, collectively referred to in this Policy as “Sexual Misconduct.” In this Policy, Sexual Misconduct may also sometimes be referred to as “Prohibited Conduct.”

Sexual Misconduct diminishes individual dignity, jeopardizes the welfare of our students and employees and impedes access to educational, social, and employment opportunities. Sexual misconduct violates our institutional values of Respect, Integrity, Accountability and Excellence. Sexual Misconduct is expressly prohibited by College policy as well as by law.

The College strives to eliminate Sexual Misconduct through primary prevention and awareness programming, education, training, clear policies, and procedures.

This Policy also explains how the College will proceed once it is made aware of reported Sexual Misconduct in keeping with our institutional values and to meet our legal obligations under Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistic Act (Clery Act), the Violence against Women Reauthorization Act of 2013 (VAWA), and other applicable law and regulations.

The procedures established under this Policy are designed to prevent the recurrence of Sexual Misconduct, remedy its effects, promote safety, and deter individuals from future Sexual Misconduct.

Sexual Harassment is a specific form of Sexual Misconduct as defined in this Policy. Federal law known as “Title IX” prohibits discrimination on the basis of sex in education. Sexual Harassment is a form of prohibited sex discrimination under Title IX and Michigan law.

Sexual Harassment may include incidents between any members of the College community, including faculty and other academic appointees, staff, coaches, interns, students, student employees and non-student or non-employee participants in College

programs, such as vendors, contractors, visitors and guests. Sexual Harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex. In determining whether the reported conduct constitutes Sexual Harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Sexual Harassment is not tolerated by the College. When the College has actual knowledge of an allegation or report of Sexual Harassment, the College will respond promptly in the manner set forth in this Policy.

Federal regulations (34 CFR Part 106) include specific definitions and requirements for public colleges related to alleged violations of Title IX. These regulations are intended to ensure that a college responds to alleged incidents of Sexual Harassment in a way that supports the alleged victim and treats both parties fairly. It is the purpose and intent of this Policy to comply with such regulations, by adopting a specific Title IX Grievance Process and related procedures that apply to alleged violations of Title IX.

This Policy also addresses other procedures to address and respond to other forms of Sexual Misconduct where the facts and circumstances, as alleged, if true, would not constitute Title IX Sexual Harassment, but could constitute Sex Discrimination or other form of Sexual Misconduct.

## II. To Whom This Policy and Procedures Apply

This Policy applies to all “Members of the College Community”, which includes all College students, faculty, staff, trustees and certain third parties including, but not limited to, guests, visitors, contractors, consultants, and their employees.

## III. Prohibited Conduct

Every Member of the College Community should be aware that the College prohibits acts of Sexual Harassment, Sex Discrimination and other forms of Sexual Misconduct. The College will respond promptly and effectively to reports of violation of this Policy and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this Policy. Prohibited conduct includes all of the following:

A. Sexual Harassment as defined by federal law commonly known as Title IX (20 U.S.C 168, including 34 CFR part 106.) This Policy refers to such conduct as “Title IX Sexual Harassment” which is conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning an educational aid benefit or service on an individual’s participation in unwelcome sexual conduct (known as Quid Pro Quo Sexual Harassment.)
2. Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a

person equal access to the College's education program or activity (known as Hostile Environment Sexual Harassment.)

3. "Sexual Assault" as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), "Dating Violence", "Domestic Violence" or "Stalking" as defined in 34 U.S. Code 12291 (See Definitions under Section XVI of this Policy.
- B. Sexual Harassment under Michigan law, defined in the Elliot Larson Civil Rights Act as unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct or communication of a sexual nature when:
1. Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment, public accommodations or public services, education, or housing;
  2. Submission to or rejection of such conduct or communication is used as a factor in decisions affecting an individual's employment, public accommodations or public services, education, or housing;
  3. Or, such conduct or communication substantially interferes with an individual's employment, public accommodations or public service, education, or housing.
- C. Sex Discrimination or Discrimination on the Basis of Sex, which includes discrimination on the basis of sexual orientation and gender identity, in violation of federal or Michigan law. Sex Discrimination can be manifested by unequal access to educational programs and activities on the basis of sex, unequal treatment on the basis of sex in the course of conducting those programs and activities, or, the existence of a program or activity that has a disparate impact on participation, improperly based on the sex of the participants.
- D. Retaliation of any nature taken by any Member of the College Community against another Member of the College Community. Retaliation means conduct which intimidates, threatens, coerces, or discriminates an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report, complaint, testified, assisted or participated or refused to participate in an investigation, proceeding or hearing under this Policy. An allegation of Retaliation will be treated as a separate allegation of a violation under this Policy. An exercise of rights protected under the First Amendment does not constitute retaliation.
- E. Violation of any "No Contact" Orders or other Supportive Measures designed to remedy or mitigate claims of Sexual Misconduct.
- F. Sexual Exploitation, which includes any act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage. Examples of sexual exploitation include, but are not limited to:

1. observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
  2. non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
  3. prostituting another individual;
  4. exposing another's genitals in non-consensual circumstances;
  5. knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- G. Unwelcome Conduct of a Sexual Nature or on the Basis of Sex, which would not otherwise be defined as Sexual Harassment but which is objectively offensive to a reasonable person, and which continues after a person who is subjected to such conduct has expressed that the conduct is unwanted and offensive. Such conduct may include but is not limited to the following:
1. Physical:
    - (a) Any unwanted and offensive physical contact of a sexual nature, including unnecessary touching, patting, hugging, brushing the body, impeding or blocking movement
    - (b) Unwanted sexual gestures or pantomiming sexual acts
    - (c) Leering or ogling
  2. Verbal/Auditory
    - (a) Sexual advances or propositions
    - (b) Sexually explicit, suggestive or abusive talk, sexually explicit jokes, teasing or anecdotes (including jokes and comments about a person's body parts, types or conditions)
    - (c) Remarks of a sexual nature about a person's body, sexual performance, activity or prowess
    - (d) Continuing to express interest after being informed the interest is unwelcome
  3. Visual
    - (a) Display of sexually-oriented graphic pictures, posters or other visual material

- (b) Displaying or transmitting any sexually explicit material via e-mail or the Internet

IV. Location of Prohibited Conduct

- A. On-campus. This Policy prohibits acts of Sexual Misconduct anywhere on-Campus. For this purpose, on-Campus includes College Park Apartments and any ACC-owned, ACC-leased or ACC-controlled property.
- B. Off-campus. This Policy prohibits acts of Sexual Misconduct occurring off-Campus, subject to the provisions of sub-paragraph C, below, if the Sexual Misconduct affects an ACC student or employee's participation in an ACC activity. This includes, but is not limited to, Sexual Misconduct which:
  - 1. Affects the individual's participation in an ACC activity including the living, learning, and working environments;
  - 2. Occurs during ACC-sponsored activities (e.g., field trips, social or educational functions, athletic competitions, student recruitment activities, internships, and service or learning experiences);
  - 3. Occurs during the activities of organizations affiliated with ACC, including, but not limited to, the activities of registered student organizations;
  - 4. Occurs during ACC-affiliated travel;
  - 5. Occurs during the application for admission to a program or selection for employment; or
  - 6. Poses a threat to a student or employee.
- C. Title IX Jurisdiction. The College only has jurisdiction over allegations of Title IX Sexual Harassment when all the following are true:
  - 1. The alleged conduct occurred in the Education Program and Activities of ACC, which is defined as locations, events and circumstances over which ACC exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs.
  - 2. ACC has control over the Respondent at the time of the Complaint.
  - 3. The alleged conduct occurs against a Complainant who is in the United States.

Despite the foregoing jurisdictional requirement related to Title IX Sexual Harassment, the College may have obligations to report alleged conduct or take other action in response to such alleged conduct for purposes other than response to alleged violations of Title IX (e.g, Reporting under the Clery Act, or action in response to allegations of Sexual Harassment under Michigan Law or other allegations of Sexual Misconduct which do not constitute Title IX Sexual Harassment.)

## V. Title IX Coordinator

The Title IX Coordinator is the official designated by the College to ensure compliance with Title IX and with this Policy. The Title IX Coordinator has the primary responsibility for coordinating and overseeing the efforts of the College regarding programming, training, investigation and education of the College Community designed to prevent Sexual Harassment, Sex Discrimination and other forms of Sexual Misconduct and to respond to, resolve and remediate prohibited conduct under this policy. The Title IX Coordinator may designate appropriate, trained personnel to assist in carrying out these duties.

The Title IX Coordinator also is the coordinating member of the Clery/Title IX Task Force. The Clery/Title IX Task Force is appointed by the College President, pursuant to Board Policy 7001, to review, recommend and develop policies and procedures, in consultation with College legal counsel, addressing issues of safety and security and to comply with federal and state laws and regulations including but not limited to the Clery Act, Title IX, and the Violence Against Women Reauthorization Act of 2013.

The Title IX Coordinator is responsible for overseeing a prompt and equitable grievance procedure for claims of Sex Discrimination and specific formal grievance process to adjudicate Sexual Harassment, as set forth in the Procedures section of this Policy, as well as procedures for other forms of Sexual Misconduct.

The name, office address, telephone number and email address of the Title IX Coordinator shall be prominently posted on the College website and in each handbook or catalog provided to applicants for admission or employment. This contact information shall be provided to all students, employees, applicants for admission and employment and all unions and professional organizations holding collective bargaining agreements with the College. All communication and reports under this Policy should be directed to the Title IX Coordinator, through such contact information. At the time of adoption of this Policy, such contact information is as follows, which may be changed, provided that notice of such change is given in the manner and to the persons set forth above:

Title IX Coordinator: Melissa Guy  
Alpena Community College  
102 Van Lare Hall  
Alpena, MI 49707  
Phone: 989.358.7211  
Email: [guym@alpenacc.edu](mailto:guym@alpenacc.edu)

## VI. Consent and Consensual Relationships

A. Consensual Relationships. This Policy covers unwelcome conduct of a sexual nature. Consensual sexual relationships between Members of the College Community are subject to other College policies. While romantic and sexual relationships may begin as consensual, they may evolve into situations that lead to charges of sexual harassment or sexual violence, subject to this Policy.

- B. Consent. Consent as referenced in this Policy means informed, voluntary consent which is subject to the following provisions:
1. Consent is informed. Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent to some form of sexual activity does not imply consent to other forms of sexual activity.
  2. It is the responsibility of a person who wants to engage in sexual activity with another person to ensure that the other person has consented to engage in the sexual activity.
  3. Lack of protest or resistance, or silence does not constitute consent.
  4. Consent is voluntary. It is given without coercion, force, threats, or intimidation; it is an affirmative cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will.
  5. Consent is given when the person is not impaired or incapacitated. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury, or other forms of coercion, or has a mental disorder, developmental disability, or physical disability that would impair his/her understanding of the act, as described below:
    - (a) Incapacitation is the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep and blackouts.
    - (b) Where alcohol or drugs are involved, incapacitation is distinct from drunkenness or intoxication, and is defined with respect to how the alcohol or other drugs consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. The factors to be considered include whether the accused knew, or a reasonable person in the position of the accused should have known, that the complainant was impaired or incapacitated.
  6. Consent may be revoked or withdrawn at any time.
- C. Consensual Relationships Between College Employees and Students. College employees are prohibited from having consensual sexual relationships with a current college student, if the Employee has any teaching, evaluative, or other supervisory authority over the student. If a consensual relationship exists or develops between a College Employee and a person who is a current student or becomes a student, the Employee shall immediately report the relationship to the Title IX Coordinator and shall assure that the Employee has no teaching, evaluative or other supervisory authority over such student. Faculty are strongly discouraged from having consensual

sexual relationships with students to avoid any potential breach of professional ethics and potential conflicts of interest.

VII. Dissemination of the Policy, Education and Awareness Programs

As part of the College's commitment to providing a working and learning environment protected from Sexual Harassment, Sex Discrimination and other Sexual Misconduct, this Policy shall be disseminated widely to the College community through publications, websites, new employee orientations, student orientations, and other appropriate channels of communication. Educational materials shall be available to all members of the College community to promote compliance with this Policy and familiarity with reporting procedures.

Education and awareness programs/materials shall include information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks, as well as safe and positive options for bystander intervention.

VIII. Reporting of Sexual Harassment or Sexual Misconduct

A. Who May Report. Reports of alleged Sexual Misconduct may be made to the Office of the Title IX Coordinator by a:

1. Complainant, as defined in Section XVI.
2. Responsible Employee, as defined in Section VIII B., below
3. Third Party Reporter, including Campus Security Authority, as defined by the Clery Act.

B. Mandatory Reporting by Responsible Employees

1. Responsible Employees are required to promptly report allegations of Sexual Harassment and other forms of Sexual Misconduct to the Title IX Coordinator or the designee of either such person, except as provided in subparagraph B. 3, below.
2. All ACC employees are Responsible Employees unless a specific exception applies.
3. Exceptions. The following people are not Responsible Employees:
  - (a) People acting in the role of, or employed by, a Confidential Resource, only to the extent that they are serving in that role;
  - (b) Office professional staff serving in an administrative support role for a Confidential Resource, only to the extent they are serving in that role;



- (c) Direct supervisors of a person acting as a Confidential Resource, only to the extent information shared regarding an alleged incident of Sexual Misconduct is shared for the purposes of providing support services concurrently or prospectively;
  - (d) Faculty members directly supervising students in a practicum course, only to the extent information shared regarding an alleged incident of Sexual Misconduct is shared for the purposes of providing mental or physical health services concurrently or prospectively.
- 4. Responsible Employees are not required to report allegations of Sexual Misconduct when the Responsible Employee learns about the allegation during a public awareness or activism event, or other public forum at which a Member of the College Community discloses experiences with Sexual Misconduct. Examples of these types of events or forums include, but are not limited to, “Take Back the Night” programs, candlelight vigils, survivor “speak-outs” and protests.
- 5. Responsible Employees are required to share information regarding the alleged Sexual Misconduct known to them, including the names of the individuals involved in the alleged Sexual Misconduct, if known, with the Title IX Coordinator, or designee.
- 6. Responsible Employees, other than the Title IX Coordinator, or designees, should not investigate any allegations of Sexual Misconduct or seek to obtain more information than the individual making the disclosure wishes to share.
- 7. Responsible Employees should inform people with whom they are discussing allegations of Sexual Misconduct that:
  - (a) They are Responsible Employees;
  - (b) They have a duty to report the alleged Sexual Misconduct to the Title IX Coordinator; and
  - (c) There are Confidential Resources available.
- 8. A Responsible Employee who knew of an act of Sexual Misconduct and failed to report the prohibited act also may be subject to disciplinary action.
- C. Reports by Students to the Title IX Coordinator. Students are encouraged to report alleged Sexual Misconduct directly to the Title IX Coordinator.
- D. Reports by Students to Other College Officials. The Title IX Coordinator is the primary reporting pathway for all claims of Sex Discrimination, Sexual Harassment and other forms of Sexual Misconduct. However, the College recognizes that there are times at which reports of Sexual Misconduct may be made to a College Official other than the Title IX Coordinator, such as the Dean of Students or Director of Housing or a Campus Security Authority. Such College Officials must immediately

convey such reports to the Title IX Coordinator so that the appropriate response procedures may be carried out under the direction of the Title IX Coordinator and Supportive Measures offered.

- E. How to File a Report of Sexual Misconduct. Reports, Complaints and Notices of alleged violations of this policy may be made to the Title IX Coordinator in any of the following ways at any time, including non-business hours.
1. Fill out the Sexual Misconduct Reporting form found at [https://discover.alpenacc.edu/safety/docs/sexual\\_misconduct\\_reporting\\_form.pdf](https://discover.alpenacc.edu/safety/docs/sexual_misconduct_reporting_form.pdf) and email, mail or deliver the form to the Title IX Coordinator using the contact information found in Section V. of this Policy. This form may be used to report any type of Sexual Misconduct under this policy including alleged Sex Discrimination, Sexual Harassment, Retaliation or Other Sexual Misconduct.
  2. Provide verbal notice to the Title IX Coordinator by calling the phone number listed in Section V. and speaking to the Title IX Coordinator or leaving a voice message that you wish to report an incident of Sexual Misconduct and providing verbal information about the incident, including your contact information.
  3. File a Formal Complaint of Sexual Harassment with the Title IX Coordinator. A Formal Complaint is a document filed and/or signed by the Complainant (or signed by the Title IX Coordinator) alleging Title IX Sexual Harassment. A Formal Complaint may be filed in person, by mail or email, using the contact information provided in Section V. of this Policy. If the Title IX Coordinator receives a written notice that does not meet this standard, the Title IX Coordinator will contact the Complainant to verify their intent to file a Formal Complaint of Sexual Harassment and provide assistance to the Complainant if needed to properly file the Formal Complaint.
- F. Anonymous Reports. Anonymous reports can be made through any of the means set forth in Section E.1 or E.2 above. The information contained in the anonymous report may necessitate a need for the College to investigate. However, without a known Complainant or reporter, the College is limited in its ability to obtain information necessary to properly respond to the Complaint and Supportive Measures.
- G. Reports Alleging Misconduct by the Title IX Coordinator. In the event a College Official receives a report which involves alleged Sexual Misconduct by the Title IX Coordinator, such report shall be referred to the Vice-President for Administration and Finance, who in consultation with legal counsel and the President, shall designate a person other than the Title IX Coordinator, having the requisite training, to review and respond to the report in the manner required by this Policy.
- H. Timeliness of Reporting. To promote timely and effective review, allegations of Sexual Misconduct should be reported to the Title IX Coordinator, or designee, as soon as possible. A report of Sexual Misconduct may be made at any time, however,

a delay in reporting an allegation may make it more difficult, or impossible, to gather relevant and reliable information.

- I. Limited Amnesty for Alcohol Violations. The College considers reporting of Sexual Misconduct to be of paramount importance and seeks to remove barriers to such reporting. Accordingly, if a person comes forward with a good faith report of Sexual Misconduct in a situation which also involves a violation of a College policy regarding alcohol, the College will not pursue disciplinary measures for the alcohol violation against such person, but may require participation in community service, education or awareness activities as an alternative to disciplinary measures. This policy does not apply to any person who is found to be responsible for an act of Sexual Misconduct

IX. Response to Reports of Sexual Harassment, Sex Discrimination or Sexual Misconduct

- A. Responsibility of Title IX Coordinator. The College shall provide a prompt and effective response to reports of Sexual Harassment, Sex Discrimination or other Sexual Misconduct in accordance with this Policy. The Title IX Coordinator has responsibility for overseeing the College's response to all allegations of Sexual Misconduct and identifying and addressing any patterns or systemic problems uncovered during the review of these allegations. The Title IX Coordinator has the responsibility for taking steps to ensure compliance with College policies and procedures regarding allegations of Sexual Misconduct.
- B. Initial Contact with Complainant and Initial Assessment. Upon receiving notice of a report or allegation of Sexual Misconduct, the Title IX Coordinator, or Designee, shall make an initial contact with the alleged victim (Complainant) to make an initial assessment regarding the appropriate next steps. During this initial assessment, the Title IX Coordinator or Designee will provide the following information and take the following action:
  1. If the report is a claim of Sexual Harassment, or the Title IX Coordinator reasonably believes that the reported facts could constitute a claim of Sexual Harassment, the Title IX Coordinator, or Designee will:
    - (a) Offer Supportive Measures as described in Paragraph D. of this Section and provide information regarding such measures.
    - (b) Notify the Complainant of his/her right to file a Formal Complaint if a Formal Complaint has not been filed.
    - (c) Notify the Complainant of his/her right to have an Advisor, as provided in Section X. A.
    - (d) Provide information regarding the Formal Grievance Process for Complaints of Sexual Harassment, including the following:

- (i) The presumption that the Respondent is not responsible for alleged Sexual Harassment unless and until the Respondent is determined to be responsible based on a preponderance of the evidence.
  - (ii) Information regarding the investigation process which will be conducted as outlined in the Procedures defined in this Policy. (Section XII)
  - (iii) The right of both parties to receive a copy of the Investigative Report and the right to obtain all evidence obtained as part of the Investigation which is directly related to the reported Sexual Harassment.
  - (iv) The Title IX Hearing Process as set forth in the Procedures defined in this Policy, including the right to present evidence and witnesses and the right of each party, through their Advisors, to cross-examine witnesses.
  - (v) The right to a written determination by an impartial Decision-Maker and the right to appeal such determination.
  - (vi) The right to appeal a Dismissal of the Formal Complaint.
  - (vii) The right of the parties to opt out of the Formal Grievance Process at any time after the filing of a Formal Complaint and to seek an Informal Resolution of the Complaint, except where the Complaint involves an allegation of Sexual Harassment by a College Employee, in which case Informal Resolution is not permitted. Both the Complainant and Respondent must consent in writing to opt out of the Formal Grievance Process and seek Informal Resolution. Either party may subsequently reinstate the Formal Grievance Process if no Informal Resolution is reached.
- (e) Determine if the individual wishes to file a Formal Complaint and offer assistance if desired by the individual. If the Complainant elects not to file a Formal Complaint, he or she can change that decision at a later date.
  - (f) If there is no Formal Complaint filed, the Title IX Coordinator shall determine whether it appears there is a sufficient basis for the Title IX Coordinator to file a Formal Complaint of Sexual Harassment.
  - (g) If the Complainant does not wish to pursue a Formal Complaint or does not desire an Investigation to take place, the Complainant may make such request to the Title IX Coordinator, who will evaluate that request in light of the College's duty to comply with state and federal law and the duty to protect the safety and security of the campus community. The College may be compelled to take action to investigate or otherwise respond to alleged Sexual Misconduct regardless of the Complainant's wishes.

- (h) In making the determination to file a Formal Complaint against the wishes of the Complainant, the Title IX Coordinator shall also consider the effect of the non-participation by the Complainant and the College's ability to pursue the Formal Grievance Process fairly and effectively. The Complainant retains all rights of a Complainant under this Policy regardless of his or her level of participation.
  - (i) If the conduct alleged, if true, could constitute Title IX Sexual Harassment, a formal Complaint is required before the parties can elect to opt out of the Grievance Procedure and elect the Informal Procedure.
2. If the reported Sexual Misconduct does not involve a claim of Sexual Harassment and the Title IX Coordinator does not reasonably anticipate that a claim of Sexual Harassment could be made, based on the information reported, the Title IX Coordinator, or Designee, will:
- (a) Offer Supportive Measures as described in Paragraph D. of this Section and provide information regarding such measures.
  - (b) Notify the Complainant of his/her right to file a Formal Complaint of Sexual Misconduct other than Sexual Harassment, if a Formal Complaint has not been filed.
  - (c) Notify the Complainant of his/her right to have an Advisor, as provided in Section X. A.
  - (d) Notify the Complainant of his or her right to seek an Informal Resolution of the matter, without filing a Formal Complaint, as set forth in Section XIII.
3. If the reported Sexual Misconduct involves a claim of Sex Discrimination, the Title IX Coordinator, or Designee, will:
- (a) Notify the Complainant of the rights under subsection 2 above.
  - (b) Notify the Complainant of the Grievance Procedure for Sex Discrimination under the Section XIV of this Policy.
  - (c) Take appropriate action to prevent and mitigate any adverse effects on the Complainant.
4. The Title IX Coordinator or Designee will notify the Complainant of the College's Prohibition on Retaliation and will advise the Complainant that any attempts intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights under Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing constitutes retaliation which is prohibited and should be reported to the Title IX Coordinator. Intimidation, threats, coercion, or discrimination, including charges against an

individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this Policy, constitutes retaliation.

5. The Title IX Coordinator or Designee shall provide Complainant with written notice of this policy, the availability of the policy on the College website and shall also provide a copy or website link to College publications which summarize the rights and options of persons who allege a violation of the Sexual Misconduct Policy as well as the rights and options of those persons who are alleged to have violated the Policy.

C. Notification of Additional Information in cases of Sexual Assault, Domestic Violence and Stalking. In addition to providing the information in Paragraph B, above, if the report of Sexual Misconduct involves an allegation of Sexual Assault, Dating Violence, Domestic Violence or Stalking, the Title IX Coordinator shall also notify the alleged victim (Complainant) of the following information, rights and options:

1. The option to notify law enforcement authorities, including local police; be assisted by campus authorities in notifying law enforcement authorities if the complainant so chooses; or to decline to notify such authorities.
2. The right to seek orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal or civil courts.
3. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order.
4. Existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.
5. Options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the complainant and if reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

D. Supportive Measures. When a Member of the College Community experiences an act of alleged Sexual Misconduct, ACC shall offer Supportive Measures regardless of whether a Complaint has been filed and regardless of whether the Complainant wishes to participate in this process provided by this Policy. The Title IX Coordinator, or Designee, will coordinate Supportive Measures with the appropriate ACC Personnel and community resources. Privacy will be maintained as much as reasonably possible when Supportive Measures are provided. The specific Supportive Measures provided will be determined on a case-by-case basis. Supportive Measures may be modified as necessary to remedy the effects of the alleged Sexual Misconduct

and to promote safety. Examples of Supportive Measures include, but are not limited to:

1. Referral to confidential resources, including counseling and other mental health services, and the Employee Assistance Program for employees, and community-based service providers;
2. class schedule modifications, withdrawals, or leaves of absence;
3. altering housing arrangements;
4. increased security and monitoring of certain areas of the campus;
5. student financial aid counseling;
6. education to the community or community subgroup(s);
7. altering work arrangements for employees or student-employees including reassignment to a different supervisor;
8. safety planning including safety escorts;
9. providing transportation accommodations;
10. implementing contact limitations (no contact orders) between the parties;
11. academic support, extensions of deadlines, or other course/program-related adjustments;
12. Issuing Timely Warnings, per the Clery Act;
13. any other actions deemed appropriate by the Title IX Coordinator.

These remedies may be applied to one, both, or multiple parties involved. Violations of the interim measures may lead to additional disciplinary action. Protective measures imposed may be temporary pending the results of an investigation or may become permanent as determined by the College.

- E. Determination of Process Following Initial Assessment. Following the Initial Assessment, the Process for handling the reported Sexual Misconduct shall be determined by the Title IX Coordinator, as follows:
1. Dismissal (Mandatory). If a Formal Complaint is filed by the Complainant alleging Title IX Sexual Harassment, the Title IX Coordinator shall determine whether the facts as alleged, if proven, would constitute Title IX Sexual Harassment. If, at any time, the Title IX Coordinator determines they would not, or do not fall within the College's Title IX jurisdiction, the Formal Complaint must be Dismissed. The Title IX Coordinator may offer other policy options to the Complainant or may proceed with further action for other forms of Sexual

Misconduct, which may include further investigation, determinations and resolutions provided by the Policy. A Dismissal of a Formal Complaint is subject to Appeal as set forth in the Procedures.

2. Dismissal (Discretionary). The Title IX Coordinator may, but is not required to, dismiss the Formal Complaint or any allegations therein if, at any time during the investigation or hearing, a Complainant would like to withdraw the Formal Complaint or any allegations in the Complaint; or if the Respondent is no longer enrolled as a student or employed, or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations contained in the Formal Complaint.
3. Formal Title IX Grievance Process. If a Formal Complaint is filed by the Complainant alleging Title IX Sexual Harassment, the Title IX Coordinator shall initiate the Formal Grievance Process, all in accordance with the Procedures Section XII of this Policy. Such Process shall include:
  - (a) Notice of Investigation
  - (b) Investigation
  - (c) Report of Investigation
  - (d) Hearing with Cross-Examination
  - (e) Determination of Responsibility
  - (f) Determination of Sanctions
  - (g) Rights of Appeal
4. Informal Resolution. If a Formal Complaint is filed alleging Title IX Sexual Harassment, and the Complaint does not involve allegations against a College employee, the Title IX Coordinator shall offer the parties the option for Informal Resolution, which may be selected by mutual, voluntary written consent of the parties at any time. The process for Informal Resolution may include any of the alternatives set forth in the Procedures Section XIII of this Policy. If there is no Formal Complaint and the reported conduct involves alleged Sexual Misconduct other than Title IX Sexual Misconduct, either party may seek Informal Resolution without the necessity of filing a Formal Complaint.
5. Investigation and Determination of Alleged Sexual Misconduct other than Title IX Sexual Harassment. If the alleged violation of the Sexual Misconduct Policy does not involve allegations of Title IX Sexual Harassment, the Title IX Coordinator may proceed to investigate the allegations and make a written finding as to whether a violation occurred without a requirement of a hearing, provided that such investigation shall follow the procedures set forth in this policy for Sexual Misconduct other than Title IX Sexual Harassment. If the alleged Sexual



Misconduct involves a claim of Sex Discrimination, the Title IX Coordinator will follow the Grievance Procedure for Sex Discrimination Complaints set forth in the Procedures Section of this Policy.

F. Privacy Considerations.

1. The sensitive nature of information provided to the Title IX Coordinator, and any investigator, will be accorded the utmost respect. However, the parties are advised that, unless expressly protected by this Policy or applicable law, the information obtained during the investigation is not confidential. Prior to the completion of the investigative report, the Title IX Investigator must send to each party and to that party's advisor, if any, the evidence subject to inspection and review and give each party equal opportunity to refer to such evidence during the hearing.
2. The College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. This provision in no way immunizes a party from abusing the right to "discuss allegations under investigation for example, by discussing those allegations in a manner that exposes that party to liability for defamation or related privacy torts, or in a manner that constitutes unlawful retaliation.
3. All employees and persons involved in the process of investigating allegations must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Employees and persons involved in investigating allegations of Sexual Misconduct may disclose information received under the following circumstances:
  - (a) To the extent provided by this Policy and its Procedures;
  - (b) To the extent necessary to:
    - (i) Eliminate the alleged Sexual Misconduct;
    - (ii) Remedy the effects of the alleged Sexual Misconduct;
    - (iii) Complete an investigation under this Policy; or
    - (iv) Complete any sanctioning processes under this Policy; or
  - (c) To the extent required by law, including, but not limited to:
    - (i) The Michigan Freedom of Information Act;

- (ii) The Michigan Bullard-Plawecki Employee Right to Know Act;
  - (iii) The Family Educational Rights and Privacy Act ("FERPA");
  - (iv) A valid subpoena, search warrant or other lawfully-issued court order;  
or
  - (v) Valid order to respond to any inquiry or complaint from, or filed with a governmental administrative agency.
4. The College has federal reporting obligations under the Clery Act, including the obligation to provide statistics of certain reported crimes. ACC will not include a Complainant's name or other identifying information in publicly available reports or timely warnings, as prescribed by the Clery Act.
  5. The College may need to report an incident to local law enforcement under certain circumstances including, but not limited to, an incident where there is a clear and imminent danger, an incident involving a weapon, an incident involving a minor, or an incident warranting the undertaking of security or safety measures for the protection of the Complainant or Members of the College Community.
  6. The College cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity and which are made and maintained in connection the provision of any treatment to the party, unless the College obtains that party's voluntary written consent.

## X. Rights and Responsibilities of Parties

### A. Right of Parties in All Claims of Sexual Misconduct.

1. *Advisors.* The Parties may each have an Advisor of their choice with them for all meetings and interviews conducted under this Policy. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. A party may also choose to attend any interview, discussion or meeting without an Advisor. Advisors are subject to the following provisions:
  - (a) Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors are not to interrupt the meeting and are primarily present for support and consultation with the Party. If unable to comply with expectations, Advisors may be asked to leave.
  - (b) All Advisors are subject to ACC policies and procedures, and are expected to advise their advisees without disrupting proceedings. Advisors may not present statements or arguments or conduct direct examination. Advisees may consult with their Advisors as requested and may do so privately as needed.

- (c) Parties may share any information directly with their Advisors, to facilitate the Advisor's participation in the process. Upon request, the Title IX Coordinator can provide a consent form to authorize ACC to share information directly with the Advisor. Advisors are expected to maintain the privacy of any documentation, exhibits or other information shared with them in accordance with the provisions of this Policy.
  - (d) Advisors who are participating in a Sexual Harassment Hearing are subject to the additional provisions of Section B. 1. Below.
2. Both parties have the right to be treated with sensitivity, dignity and respect.
  3. Both parties have the right to request Supportive Measures.
  4. Both parties have the right to a process conducted by persons who are impartial and unbiased.

**B. Rights of Parties in Claims of Sexual Harassment**

In addition to the rights set forth in Section A. above, the parties to a claim of Sexual Harassment have the following rights:

1. If a Formal Complaint of Title IX Sexual Harassment is filed, the Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and will be familiar with this Policy and the Procedures hereunder. In addition to the provisions of Section A. 1. above, Advisors involved in a Formal Complaint of Sexual Harassment are subject to the following:
  - (a) Advisors may request to meet with the Title IX Coordinator, or Designee, in advance of portions of the Formal Grievance process to allow Advisors to clarify and understand their role, as well as the relevant Policies and Procedures.
  - (b) One party's choice to select an attorney to serve as their Advisor does not obligate the College to provide an attorney for the other Party.
  - (c) Choosing an Advisor who is also a witness creates potential for bias and conflict-of-interest. An Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).
  - (d) At a hearing, Parties must have an Advisor to conduct cross-examination. If a Party does not have an Advisor for a hearing, the Title IX Coordinator or Designee will appoint a trained Advisor for the limited purpose of conducting any cross-examination. A party is not permitted to conduct cross-examination on his or her own behalf.

- (e) Advisors may not speak on behalf of the Party they advise except during the cross-examination portion of the hearing proceeding.
- 2. Both parties have an equal opportunity to review the Investigative Report and the right to obtain all evidence obtained as part of the Investigation which is directly related to the reported Sexual Harassment.
- 3. Respondent has the right to be presumed not responsible for alleged Sexual Harassment unless and until the Respondent is determined to be responsible based on a preponderance of the evidence.
- 4. When a Formal Complaint of Sexual Harassment has been filed, both parties have the right to participate in or not participate in the Title IX Hearing Process as set forth in the Procedures defined in this Policy, including the right to present evidence and witnesses and the right of each party, through their Advisors, to cross-examine witnesses.
- 5. Both parties have the right to a written determination by an impartial Decision-Maker and the right to appeal such determination.
- 6. Both parties have the right to appeal a Dismissal of the Formal Complaint.
- 7. Both parties have the right to opt out of the Formal Grievance Process at any time after the filing of a Formal Complaint and to seek an Informal Resolution of the Complaint, except where the Complaint involves an allegation of Sexual Harassment of a student by a College Employee, in which case Informal Resolution is not permitted. Both the Complainant and Respondent must consent in writing to opt out of the Formal Grievance Process and seek Informal Resolution. Either party may subsequently reinstate the Formal Grievance Process if no Informal Resolution is reached.
- 8. Complainant has the right not to have questions or evidence presented regarding the Complainant's prior sexual behavior or sexual predisposition, unless offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

C. Concurrent Criminal Complaints

- 1. The Complainant has the right to pursue charges or file a concurrent complaint with local law enforcement or any other state or federal agencies.
- 2. Depending upon the facts alleged, ACC may have legal obligation to investigate alleged violations of this Policy independent of any criminal investigations carried out by law enforcement.

3. ACC will not necessarily wait for the conclusion of a criminal investigation or for criminal judicial proceeding to begin before it commences its own independent investigation into the alleged violations of this Policy, if such investigation is deemed to be necessary.
4. ACC will request available evidence from law enforcement conducting any parallel criminal investigation.
5. ACC will comply with reasonable requests by law enforcement for cooperation in their criminal investigation as follows:
  - (a) At the request of law enforcement, ACC may temporarily delay its investigation into an alleged violation of this Policy while law enforcement gathers evidence for a limited amount of time.
  - (b) After a temporary and reasonable delay to allow for law enforcement to gather evidence, ACC will promptly resume its investigation, to the extent necessary under this Policy and its Procedures.
  - (c) Supportive measures may be instituted or continued while law enforcement gathers evidence, regardless of whether or not ACC has temporarily delayed its investigation into an alleged violation of this Policy.

## XI. Additional Responsibilities of College

### A. Time Frames

1. The College will resolve allegations of Sexual Misconduct in a reasonable, prompt, and equitable manner.
2. The College endeavors to issue a Determination and, if applicable, any sanctions within ninety (90) days of written notification to the parties that the College will undertake an investigation of an alleged violation of this Policy. However, all time frames expressed in this Policy and its Procedures are meant to be guidelines and not rigid requirements. In Sexual Harassment cases involving a Live Hearing, the time for completion of the process may be extended if necessary in order to obtain the services of a trained, impartial Decision-Maker.
3. Factors that may affect the length of time necessary to completely resolve an allegation of Sexual Misconduct include, but are not limited to: the complexity of the allegations; the availability of the Complainant, the Respondent, and witnesses; the reluctance of the Complainant to file a Complaint; the effect of concurrent criminal investigations; intervening closures of the College; the necessity to provide for rights under any applicable collective bargaining agreement; and any other unforeseeable circumstances.
4. In the event the College determines it requires additional time beyond the time frames set forth in this Policy or its Procedures to fully and properly carry out its

responsibilities under this Policy or its Procedures, it will provide simultaneous written notice to the Complainant, the Respondent, and the Title IX Coordinator, or Designee, notifying them of the anticipated length of the delay and general nature of the circumstances causing the delay.

- B. Standard of Proof. All allegations of Sexual Misconduct must be proven by a preponderance of the evidence, which means that, in the opinion of the Decision-Maker, it is more likely than not that the alleged conduct occurred and that such conduct is a violation of this Policy.
- C. Training of Personnel. The Title IX Coordinator shall receive training at least annually and as needed to carry out the responsibilities of the position. In addition, the Title IX Coordinator, and all persons serving as Investigators, Hearing Officers, Decision-Makers on Responsibility, Decision-Makers on Sanctions, Appeal-Decision Makers, Informal Resolution Facilitators, or otherwise participating on behalf of the College in the Formal Grievance Process for Sexual Harassment, shall receive annual training on the following topics, as appropriate for their roles. All materials used in the training of such personnel shall be available on the College website in their entirety.
1. The definition of Sexual Harassment under Title IX as used in this Policy
  2. The Policy and Procedures of the College regarding Sexual Misconduct in general and Sexual Harassment in particular.
  3. The scope of the College's education program or activity as it relates to Title IX
  4. How to conduct an investigation and grievance process, including hearing, appeals, and informal resolution process, as applicable
  5. How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest and bias
  6. How to use any technology involved in a live hearing
  7. How to determine questions of relevance, including how to apply the rape shield protections to protect Complainants
  8. How to apply the presumption that the Respondent is not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process
  9. How to implement appropriate and situation-specific remedies
  10. How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

D. Retention of Records Regarding Reports of Sexual Misconduct. The Title IX Compliance Coordinator is responsible for maintaining records relating to sexual harassment and sexual violence reports, investigations, and resolutions. Records shall be maintained in accordance with College records policies. Records and evidence relating to claims of Sexual Harassment shall be retained for at least seven (7) years from the last date of the Determination and any appeal of the Determination. Records may be maintained longer at the discretion of the Title IX Coordinator in cases where the parties have a continuing affiliation with the College. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from legal counsel.

## XII. Title IX Sexual Harassment Grievance Procedure

The College shall provide a consistent transparent grievance process for resolving Formal Complaints of Title IX Sexual Harassment which shall comply with this Policy, the procedures set forth in this Section and Title IX.

### A. Formal Complaint

1. The grievance process for a claim of Title IX Sexual Harassment is initiated by the filing of a Formal Complaint, which may be filed by a Complainant or signed by the Title IX Coordinator, alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the Education Program or Activity of the College, as defined in this Policy.
2. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail, by using the contact information listed in Section V of this Policy, or by any other method prescribed by the College. The Formal Complaint must contain the signature or digital signature of either the Complainant or the Title IX Coordinator and must be dated. If filed by a Complainant, it must contain the contact information for the Complainant. When the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator does not become the Complainant and is not a party during the grievance process and must comply with all requirements that Title IX personnel be free from conflict and bias.
3. A Formal Complaint shall set forth the specific facts alleged in sufficient detail to inform the Respondent of the basis for the Complaint.

### B. Review of Formal Complaint and Assignment of Investigator.

1. The Title IX Coordinator, or Designee, shall review the Formal Complaint to assure it is signed and filed in accordance with the foregoing procedure and includes the specific allegations required. If it is procedurally deficient, the Title IX Coordinator shall contact the Complainant and advise of what information is needed to properly complete the Complaint before commencing an investigation.

If the Formal Complaint fails to allege facts which, if true, could constitute Sexual Harassment, the Complaint shall be dismissed as set forth in Section IX. E.

If the Complaint is not dismissed, the Title IX Coordinator shall assign an Investigator, who may be the Title IX Coordinator, to perform the investigation. The Investigator shall, in consultation with the Title IX Coordinator, develop a plan of investigation, including the known witnesses to be interviewed and the information to be gathered, as more fully described in Paragraph D. below

2. Impartiality and Avoidance of Conflicts of Interest.
  - (a) If the Complainant or the Respondent believes that the investigator assigned to the Complaint has a conflict of interest or is impermissibly biased in the matter, the Complainant or the Respondent may request an alternative investigator. This request must be made in writing to the Title IX Coordinator within seven (7) days of when the Complainant or Respondent knew or should have known of the alleged conflict of interest or impermissible bias.
  - (b) The written request must contain sufficient information and details to establish that the investigator has a conflict of interest or impermissible bias.
  - (c) An investigator may seek to recuse oneself from an investigation if the investigator believes there may be a conflict of interest that prevents the investigator from being unbiased in carrying out the investigation. A request to recuse oneself must be made in writing to the Title IX Coordinator and state the basis for the request. The Title IX Coordinator will grant or deny this request in writing.
3. It is within the Title IX Coordinator's discretion to:
  - (a) Appoint an alternative investigator;
  - (b) Direct the investigator to fairly address the conflict of interest or impermissible bias during the investigation; or
  - (c) Reject the request on the grounds that no conflict of interest or impermissible bias was demonstrated.
4. In the event that the Title IX Coordinator has a conflict of interest or is impermissibly biased, the President, or Designee, shall appoint an alternate person to serve in the role of the Title IX Coordinator for that particular matter; such alternate may be another College official having the requisite training, legal counsel for the College or a retained, neutral, outside third-party.

#### C. Notice of Investigation (NOI)



1. Prior to commencing the Investigation, the Title IX Coordinator, or Designee, shall provide a Notice of Investigation (NOI) to both the Complainant and Respondent. Such Notice of Investigation shall contain the following information:
  - (a) Notice of the allegations of sexual harassment potentially constituting sexual harassment as including sufficient details known at the time and with sufficient time to prepare a response before any initial interview
  - (b) A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
  - (c) Notice that the parties may have an advisor of their choice, who may be an attorney. The Notice will also provide information regarding the College policies related to the role and conduct of Advisors
  - (d) A statement about the College Policy on Retaliation
  - (e) The name and contact information of the Investigator
  - (f) Information about how to notify the Title IX Coordinator of any conflict of interest claimed by any party
  - (g) An instruction to preserve evidence that is directly related to the allegations
  - (h) A statement that College Policy prohibits knowingly making false statements including knowingly submitting false information during the resolution process
  - (i) Information about the College's Sexual Misconduct Policy and how to access it online.
  - (j) A request to meet with the investigator to be interviewed
  - (k) Notice that if Respondent does not elect to participate in the investigation, ACC will carry out its investigation based on available information and that the Respondent may still be subject to sanctions pursuant to this Policy and its Procedures.
2. The Notice of Investigation shall also notify the parties that the parties may choose to resolve the Complaint through a process of Informal Resolution if both parties consent in writing to use such a process, provided that, at any time prior to reaching a Resolution, either party has the right to withdraw from the Informal Resolution Process and resume the Formal Grievance Process. This offer of Informal Resolution is not permitted if the Complaint contains allegations of Sexual Harassment by a College Employee against a student.

3. The Notice of Investigation may be amended as the investigation process continues if additional information becomes available regarding the addition or dismissal of allegations.
4. The Notice of Investigation will be made in writing and delivered by at least one of the following methods:
  - (a) Hand-delivery in person
  - (b) Mailed to the local address of a party as contained in the College's records by first class U.S. mail
  - (c) Sent by electronic mail to the ACC email account of the party

Delivery is presumed completed and effective on the date of delivery in person or via email, and on the day following mailing in the case of U.S. mail
5. A Notice of Investigation of faculty or staff will also comport with any requirements of the applicable collective bargaining agreement, if any, regarding notice of investigations that may lead to discipline.

D. Investigation

1. The Title IX Coordinator is the College Official in charge of any investigation required or permitted by this Policy. The investigation shall be conducted by the Investigator assigned by the Title IX Coordinator (which may be the Title IX Coordinator) under the supervision of the Title IX Coordinator.
2. The Investigator will develop a plan of investigation, approved by the Title IX Coordinator, which includes the following, all of which will be updated throughout the course of the investigation:
  - (a) The alleged misconduct and the specific College policies which are implicated, based on the Initial Assessment
  - (b) A list of the known witnesses which the Investigator seeks to interview and the evidence which the Investigator seeks to review.
  - (c) A plan for the intended investigation time frame
3. The Investigator shall interview the parties and other witnesses, as available, inspect documentary evidence, and review other evidence that may be available which the Investigator deems relevant and necessary for a complete and thorough investigation.
4. The Complainant and Respondent will be separately interviewed, unless either refuses to participate.

5. The Investigator will send written notice to the parties of any investigative interviews, meeting or hearings. There is no requirement that such written notice be sent to any party in advance of the interview, unless the participation of the party is needed, in which case the Investigator shall provide the party with written notice of the time, date and location of the meeting, as well as any other persons who are expected to be in attendance and the purpose of the meeting.
6. The parties shall have an equal opportunity to provide the Investigator with information regarding facts and expert witnesses and other inculpatory and exculpatory evidence.
7. The burden of gathering evidence is on the College, not the parties.
8. The Investigator may independently obtain any evidence available which the Investigator believes is relevant to the allegations and necessary to a thorough investigation.
9. The Investigator shall provide the parties with the same opportunity to be present and to have others present during any proceeding, including the right to be accompanied by an Advisor of the party's choice . This does not mean that the Investigator must allow either party to be present during the interview of another witness; but if one party is permitted to be present, the other party has the same opportunity.
10. The College shall not issue any "gag order" or restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
11. The Investigator shall send the parties, and their advisors, evidence directly related to the allegations, in electronic form or hard copy with at least 10 days for the parties to respond.
12. The Investigator shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.
13. The Investigator may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
14. The Investigator shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and

maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.

15. Either party may provide written statements to the Investigator responding to any information produced during the Investigation and/or suggesting witnesses, documents and questions to the Investigator. It is within the Investigator's discretion to determine whether to conduct additional investigation, or ask the questions suggested by a party, based on factors such as the availability of witnesses, the relevance of the evidence sought to be produced and whether further information is needed to conduct a fair and thorough investigation.

E. Investigation Report

1. The Investigator shall prepare an Investigation Report, fairly summarizing all the evidence directly related to the Investigation. The Investigation Report shall contain, at a minimum:
  - (a) An overview of the investigation undertaken
  - (b) A summary of all evidence and testimony reviewed and considered
2. Prior to finalizing such report, the Investigator shall deliver a draft of the Investigation Report to both parties and their Advisors, via electronic mail or hard copy.
3. To the extent that a party has not already received a copy of any evidence directly related to allegations, the Investigator shall deliver a copy of such evidence, via electronic mail or hard copy to the parties and their Advisors. Delivery shall be effective on the date of email or personal delivery to each party.
4. Each party shall have an opportunity for at least 10 days following delivery of the Draft Investigation Report to make any comments or response in writing to the Investigator. Such comments and responses shall be considered by the Investigator prior to issuing the Final Investigation Report. The parties may elect to waive the 10-day comment period or any portion thereof.
5. Following the consideration of any written comments or responses submitted by the parties, the Investigator shall finalize the Investigation report which shall be delivered by email or personal delivery or U.S. Mail to:
  - (a) The Title IX Coordinator
  - (b) The Complainant
  - (c) The Respondent
  - (d) The Advisors for both parties

6. Delivery of the Final Investigation Report shall be deemed complete upon the date of email, hand-delivery or mailing by first class mail.
7. Following the delivery of the Draft Report, and at all times after that, the Investigator shall make available to the parties for inspection any original evidence directly related to the allegations, if such evidence is in the possession of the Investigator or the College.

F. Live Hearing

1. *Notice of Hearing.* Upon receipt of the Final Investigation report, the Title IX Coordinator shall send notice to both parties and their advisors that a Live Hearing will be conducted for the purpose of presenting evidence to a Decision-Maker to determine whether the Respondent is responsible for Sexual Harassment, as alleged in the Formal Complaint. The Notice of Hearing shall contain the following information:
  - (a) Date and Time of the hearing, which shall be not less than 10 days following the effective date of delivery of the Final Investigation Report.
  - (b) The place of hearing if the hearing will be conducted in person with the parties present at the same geographic location.
  - (c) If the hearing will be conducted through the use of video conference technology, the Notice shall contain the instructions for accessing any technology that will be used and for requesting any accommodation at least 5 days prior to the hearing.
  - (d) The Name of the Decision-Maker and notice that any objections to such Decision-Maker on the basis of bias or prejudice must be presented in writing to the Title IX Coordinator at least 5 days prior to the hearing.
  - (e) The names of all witnesses who may be called to present evidence at the hearing.
  - (f) Notification that the parties continue to have the right to elect the Option of Informal Resolution, provided both parties consent in writing.
2. *Selection of Hearing Decision-Maker.* The Decision-Maker may be any of the following individuals, and shall be selected by the Title IX Coordinator, in consultation with legal counsel for the college, subject to right of both parties to object to such Decision-Maker on the basis of bias or prejudice. Only Decision-Makers having received the training required by this Policy shall be selected. No person who served as the Title IX Coordinator or Investigator in the matter may serve as a Decision-Maker in that matter.
  - (a) If the Respondent is a College Employee, the Decision-Maker shall be a person who is not a college employee, having the knowledge, training and

experience to conduct a hearing and render a decision in matters involving Title IX Sexual Harassment.

- (b) If the Respondent is a Student, the Decision-Maker may be the Dean of Students, or Designee, provided that the Decision-Maker shall have the right to consult with legal counsel for the College on any evidentiary or procedural issues arising during the Hearing. If the Dean of Students is the Decision-Maker as to the issue of Responsibility, the Dean of Students shall also decide the issue of sanctions.
- (c) If the Respondent is a Student, the Decision-Maker may be an outside resource who is not a college employee, having the knowledge, training and experience to conduct a hearing and render a decision in matters involving Title IX Sexual Harassment.
- (d) If the Respondent is a Student, the Decision-Maker may be a panel of 3 people, provided that all such persons have received training as Decision-Makers. One person on the panel shall be selected as the Hearing Officer, who may consult with college legal counsel on any evidentiary or procedural issue arising during the hearing.

### 3. Conduct of Hearing

- (a) *Assistance by Advisors.* Both parties may have an Advisor to assist them at the Hearing and in preparing for the hearing. Advisors are subject to the provisions of this Policy as set forth in Section X. A. as well as other reasonable rules established by the Decision-Maker or Hearing Officer.
- (b) *Presentation of Report by Title IX Coordinator/Investigator.* The Title IX Coordinator/Investigator shall present the Investigation Report and provide information regarding the information that is and is not contested.
- (c) *Presentation of Witnesses and Evidence.* The witnesses shall be subject to questioning by the Decision-Maker and cross-examination by the Advisors for the parties. The Decision-Maker shall determine the order of presentation of the evidence. Both parties and the Title IX Coordinator/Investigator shall have the opportunity to present witnesses and evidence. The burden of proving Responsibility shall be on the College, not on the parties.
- (d) *Cross-Examination by Advisors.* Each Party must have an Advisor at the hearing in order to conduct cross examination. If a Party does not have an Advisor, the College shall appoint an Advisor for the purpose of conducting cross-examination. The Advisor may be but is not required to be an attorney.
- (e) *Relevant Questions.* At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

- (f) *Decision on Relevance by Decision-Maker.* Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- (g) *Absence of Party or Witness.* If a party or witness does not appear at the hearing, the hearing may continue in the absence of the party or witness. The hearing may be adjourned or rescheduled for compelling reasons at the discretion of the Decision-Maker.
- (h) *No Consideration of Statements not Subject to Cross-Examination.* If a party or witness does not appear or does not submit to cross-examination, the statements of that party or witness may not be considered by the Decision-Maker.
- (i) *No Inference Based on Failure to Appear or Submit to Cross-Examination.* The Decision-Maker shall not be permitted to draw any inference regarding responsibility based solely on the absence of a party or witness or the refusal to answer questions on cross-examination.
- (j) *Presence of Parties, Advisors and Witnesses.* The parties and their Advisors are permitted to be present during the presentation of all evidence and witnesses. Parties and Advisors are not permitted to be present during any deliberation if the Decision-Maker is a panel. Other witnesses shall only be permitted to be present when they are presenting evidence or being cross-examined, unless the Decision-Maker allows their presence for other reasons, after an opportunity for both parties to object to such presence.
- (k) *Recording of Hearing.* The College will create an audio or audiovisual recording, or transcript, of the live hearing and make it available to the parties for inspection and review. If the Decision-Maker on Sanctions is a different person than the Hearing Decision-Maker, the recording shall also be provided to the Decision-Maker on Sanctions.

#### G. Determination of Responsibility

1. Within a reasonable time following the Hearing, the Decision-Maker will issue a written Determination of Responsibility, which shall include the following:
  - (a) Identification of the allegations potentially constituting sexual harassment
  - (b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
  - (c) Findings of fact supporting the determination

- (d) Conclusions regarding the application of the College's Policy to the facts
  - (e) A statement of, and rationale for, the result as to each allegation, including a determination regarding whether the Respondent is determined, by a preponderance of the evidence, to be responsible for Sexual Harassment.
  - (f) A Determination as to whether the Respondent has engaged in any other Sexual Misconduct alleged, or violation of College Policy or Code of Conduct, other than Sexual Misconduct, which is or may be subject to discipline.
  - (g) Whether remedies designed to restore or preserve equal access to the College's education program or activity have been or will be provided by the College and whether further remedies are recommended.
  - (h) Notification to each party of their right to appeal the Determination in accordance with College Policy for the following reasons:
    - (i) Procedural Irregularity that affected the outcome of the matter
    - (ii) Newly discovered evidence that could affect the outcome of the matter
    - (iii) Bias or Conflict of Interest by the Title IX Coordinator, Investigator or other Personnel that could affect the outcome of the matter
2. The written Determination of Responsibility shall be delivered by the Decision-Maker simultaneously to the Parties with a copy to the Title IX Coordinator and the Investigator.

#### H. Determination of Sanctions.

1. If the Determination of Responsibility includes a finding that the Respondent was determined to be responsible for Sexual Harassment or other form of Sexual Misconduct or other violation of College Policy, the matter shall proceed to a Determination of Sanctions, provided that if an appeal is filed by either party, the College may, but is not required to, defer the Determination of Sanctions until the outcome of the appeal. Alternatively, if the College proceeds to a Determination of Sanctions while an appeal of the Determination of Responsibility is pending, provided that the Respondent will have the opportunity following the Determination of Sanctions to appeal the Determination of Sanctions and the Determination of Responsibility.
2. *Purpose and Effect of Sanctions.* If a Respondent is found responsible for Sexual Harassment or other Sexual Misconduct or violation of Policy, the College will initiate the appropriate sanctioning process to eliminate the misconduct, prevent its recurrence, deter individuals from similar future behavior and discipline the Respondent. The Sanctioning Official shall be responsible for implementing any sanctions or otherwise ensuring sanctions are implemented.



3. *Sanctioning Official.* The person who shall make the Determination of Sanctions (Sanctioning Official) shall be one of the following:
  - (a) If the Respondent is a student, the Determination of Sanctions shall be made by the Dean of Students, or Designee.
  - (b) If the Respondent is a college employee, the Determination of Sanctions shall be made by either the Vice-President for Administration and Finance or the Vice-President for Academic Affairs, as appropriate.
  - (c) If the Respondent is a Vice President, the Sanctioning Official shall be the President. If the Respondent is the President, the Sanctioning Official shall be the Board of Trustees.
  - (d) If the Respondent is a contractor or other person over whom the College exercises control, the Sanctioning Official shall be the Vice-President for Administration and Finance, or Designee.
4. *Impact Statements*
  - (a) Within five (5) days of being given notice of the Determination, the Complainant or Respondent may submit an Impact Statement to the Title IX Coordinator, or Designee.
  - (b) The Title IX Coordinator, or Designee, will provide the Impact Statements, if any, to the Sanctioning Official.
  - (c) In the event that neither the Respondent nor the Complainant submits an Impact Statement, the Title IX Coordinator, or Designee, will inform the Sanctioning Official that no Impact Statement was submitted.
  - (d) The Sanctioning Official shall determine the appropriate sanction after receiving the Impact Statement or receiving notice from the Title IX Coordinator, or Designee, that no Impact Statement was submitted.
5. Upon determining the appropriate sanction, the Sanctioning Official will simultaneously inform the Complainant, Respondent, and Title IX Coordinator, or Designee, in writing of the terms and conditions of the sanction to be imposed.
6. The Complainant and the Respondent must be afforded equitable rights under any process used to determine an appropriate sanction. Appropriate considerations in determining sanctions include the following:
  - (a) The nature and severity of the Prohibited Conduct
  - (b) The impact of the Prohibited Conduct on others
  - (c) The circumstances surrounding the Prohibited Conduct

- (d) The Respondent's disciplinary history
  - (e) The action required to end the Sexual Misconduct, prevent the recurrence of Sexual Misconduct and remedy the effects of the Sexual Misconduct.
7. If the Respondent is a student, possible sanctions may include, but shall not be limited to, one or more of the following:
- (a) *Reprimand*: A written reprimand, including the possibility of more severe disciplinary sanctions in the event of the finding of a subsequent violation of ACC regulations within a stated period of time.
  - (b) *Campus Restrictions*: Limitations on the times and/or places where a Respondent may be present on-Campus.
  - (c) *Removal from College Housing*. Removal from or relocation within College Park Apartments.
  - (d) *Educational Programs*: Mandatory participation in educational programs intended to correct the misconduct, such as training, workshops, seminars, or other educational activities.
  - (e) *Revocation of ACC Privileges*: Revocation of ACC privileges, such as participation in extra-curricular activities, for a definite or indefinite period of time.
  - (f) *Disciplinary Probation*: Subjection to a period of critical examination and evaluation of behavior.
  - (g) *No Contact Orders*: Prohibition on all forms of contact with certain people.
  - (h) *Suspension*: Exclusion from classes and other privileges or activities as set forth for a definite period of time.
  - (i) *Dismissal*: Permanent termination of student status.
8. If the Respondent is an employee, possible sanctions may include, but are not limited to, one or more of the following:
- (a) *Written Reprimand*: Written documentation of a failure to abide by ACC policy or procedures maintained in the employee's personnel file.
  - (b) *Performance Improvement Plan*
  - (c) *Recommendation for Counseling*
  - (d) *Educational Programs*: Required completion of program or activity intended to correct misconduct such as training, workshops, seminars, or other educational activities.

- (e) *Revocation of ACC Privileges*: Revocation of ACC privileges or responsibilities for leadership roles, for a definite or indefinite period of time.
  - (f) *Campus Restrictions*: Limitations on the times and/or places where a Respondent may be present on campus.
  - (g) *No Contact Orders*: Prohibition on all forms of contact with the Complainant or other specified persons.
  - (h) *Suspension*: Exclusion from work, with or without pay, and other related activities as set forth for a definite period of time.
  - (i) *Termination*: Permanent separation of the employment relationship
9. *Time Frame*. Generally, the Sanctioning Official will determine a sanction within ten (10) days of being given the Determination of Responsibility unless the terms of the applicable collective bargaining agreement require otherwise.
10. *Pendency During Appeals*. No final disciplinary action based on the findings and conclusions of the Determination shall be taken against the Respondent during any appeal process, although Interim Measures may be instituted or continued until all appeals are exhausted.

I. Additional Remedies, Interventions, and Accommodations

Regardless of the nature of the Respondent's relationship with the College, or any sanctions imposed pursuant to these Procedures, additional remedies, interventions, and accommodations may be available to a Complainant or other individuals affected, either collectively or individually. The Title IX Coordinator, or Designee, will coordinate additional remedies, interventions, and accommodations, if any. Additional remedies, interventions, and accommodations, if any, will be determined on a case-by-case basis. Possible additional remedies, interventions, and accommodations include, but are not limited to any of the Supportive Measures set forth in Section IX. D. of this Policy.

J. Appeal Procedures

1. *Appeal of the Determination of Responsibility or Appeal of a Dismissal*. Either party may appeal any Determination or Dismissal, subject to the provisions of this Policy and its Procedures. A Complainant or a Respondent may only appeal a Determination or Dismissal on one or more of the grounds set forth below:
- (a) Newly Discovered Evidence.
    - (i) There has been the discovery of new information or evidence that would have a material bearing on the final Determination.

- (ii) The person appealing establishes by a preponderance of evidence in the written appeal that such information or evidence was reasonably unavailable at the time the Determination was issued.
- (b) Bias or Conflict of Interest by Investigator or Decision-Maker.
- (i) The Determination was improperly influenced based on such personal bias; and
  - (ii) The issue of personal bias was raised during the course of the investigation (if the person knew or should have known of the alleged personal bias), and
  - (iii) The investigator failed to fairly address the alleged personal bias in (or before) Determination or that the findings of fact, recommendations, or conclusions demonstrate an improper bias.
- (c) Procedural Irregularity Affecting Outcome. To constitute grounds for appeal the Procedural Irregularity must have been raised during the hearing and must be shown to have had a substantial effect on the outcome.
2. *Timeliness.* An appeal of a Determination of Responsibility or Dismissal must be made in writing to the Appellate Decision-Maker, and delivered to the office of Title IX Coordinator within seven (7) days of receipt of the of the Determination that is being appealed.
  3. *Initial Review.* Within fourteen (14) days of receiving a written appeal, the Appellate Decision-Maker shall make an initial determination regarding whether or not the content of the written appeal, if taken as true, establishes sufficient grounds for an appeal as set forth in Section J. 1(a) -J.1(c) above. If the grounds for appeal are not sufficient, or the appeal is not timely, the Appellate Decision-Maker or Designee, shall provide the Complainant, the Respondent, and the Title IX Coordinator with concurrent written notice that the appeal has been denied and dismissed. There is no appeal from this decision.
  4. *Notice regarding Sufficiency of Grounds for Appeal* If there are sufficient grounds for an appeal, Decision-Maker shall provide the Complainant, the Respondent, and the Title IX Coordinator, or Designee, with concurrent written notice that sufficient grounds for an appeal have been stated and that each party and the Title IX Coordinator shall have 14 days to respond to the appeal in writing.
  5. *Decision on Appeal of the Determination of Responsibility.* The Decision-Maker shall determine if the reasons for appeal are supported by a preponderance of the evidence. The Decision-Maker may deny the Appeal and affirm the Determination or may grant the Appeal in whole or in part. The Determination on Appeal shall be in writing and shall contain the reasoning or rationale to support the Determination on Appeal. If the Appeal is granted, the Decision-Maker shall

specify whether the matter is remanded in whole or part for any additional investigation or hearing.

6. *Appellate Decision-Maker.* The Decision-Maker on Appeal of the Determination of Responsibility or Appeal shall be one of the following:

(a) If the Appellant is a student, the Vice-President for Academic Affairs shall be the Appellate Decision-Maker, or the College shall have the right to select an impartial outside trained Appellate Decision-Maker.

(b) If the Appellant is an employee, the Decision-Maker shall be either the Vice-President for Administration and Finance or the Vice-President of Academic Affairs, or the College shall have the right to select an impartial, outside trained Appellate Decision-Maker

7. Appeal of the Sanction.

(a) If the Respondent is a Student

(i) The Respondent shall have the right to appeal any Sanction on the same grounds and in the same manner and to the same person provided in Paragraphs 1-6 above.

(ii) In addition, the Respondent may appeal the Sanction on the grounds that the Sanction is fundamentally unfair or disproportionate based on the Determination)

(iii) Under no circumstances may a sanction be reduced below any minimums established by this Policy or its Procedures.

(iv) An appeal, if any, from the Sanctioning Official's decision regarding the appropriate sanctions is limited only to the terms and conditions of any sanction and may not be used as a collateral attack on the findings and conclusions contained within the Determination.

(v) Timeliness. An appeal of the sanction must be made in writing to the Appeal Decision-Maker within seven (7) days of notice of the sanction.

(b) If the Respondent is Faculty or Staff

(i) Grounds for Appeal. In addition to the grounds for Appeal set forth in Section XII. J., the grounds for appeal are determined by the terms of the collective bargaining agreement or employee handbook covering the terms and conditions of the Respondent's employment.

(ii) An appeal, if any, from the Sanctioning Official's decision regarding the appropriate sanctions and interventions is limited only to the terms

and conditions of any sanctions or interventions and may not be used as a collateral attack of the findings and conclusions contained within the Determination.

- (iii) The procedures by which a Respondent may appeal a sanction are determined by the terms of the collective bargaining agreement, employee handbook or contract covering the terms and conditions of the Respondent's employment.
  - (iv) All appeals must be carried out in a prompt and equitable manner, including equal opportunity for both the Complainant and the Respondent to challenge a sanction.
  - (v) All appeals must be carried out in a manner consistent with, and not in contravention of, this Policy and its Procedures.
8. *Outcome.* The outcome of any appeal will be simultaneously communicated in writing to the Complainant, the Respondent, and the Title IX Coordinator.
9. *Final Notifications.* Upon exhaustion of all appeals, or if no appeals are filed in a timely manner, and upon notification to the Title IX Coordinator, or Designee, of the status of the appeals, the Title IX Coordinator, or Designee, shall provide simultaneous written notice to the Complainant and Respondent that the Determination and sanction, if any, are final.

### XIII. Informal Resolution Options

- A. The Title IX Coordinator may offer the parties the option to resolve the allegations through informal resolution which may include any form of informal means deemed appropriate by the Title IX Coordinator, including but not limited to mediation, facilitation or restorative justice, so long as both parties give voluntary, written consent to attempt informal resolution. Any person who facilitates the informal resolution must be well-trained.
- B. The College shall not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of Sexual Harassment.
- C. The College shall not require the parties to participate in an informal resolution process.
- D. The College may not offer an informal resolution process in claims of Sexual Harassment unless a Formal Complaint is filed.
- E. Informal Resolution may be offered to the parties in an effort to resolve matters of alleged Sexual Misconduct other than Sexual Harassment without the necessity of filing a Complaint.

- F. Information Resolution may not be offered and may not be used to resolve allegations that a College employee sexually harassed a student.
- G. The informal resolution process may also be used for less complicated matters that can be quickly resolved to the satisfaction of both parties. An example of such a matter might be a single comment that the complainant deemed objectionable and either a clarification or an apology would resolve the matter. The informal process is completely voluntary, and both parties must agree to it. A complainant has the right in every case to insist on a formal investigation and findings.

#### XIV. Sex Discrimination Grievance Procedure

- A. Complaint of Sex Discrimination. The grievance process for a claim of Sex Discrimination is initiated by the filing of a Complaint with the Title IX Coordinator, which may also be referred to as a Grievance.
- B. An investigation shall be conducted by the Title IX Coordinator, or by an Investigator assigned by the Title IX Coordinator. The Investigation procedure consists of thorough investigations affording all interested persons an opportunity to submit information and documentation regarding the Complaint. Interested persons shall include the Grievant and the person(s) against whom the allegation(s) of discrimination have been made, and their respective representatives, if any.
- C. The investigation shall be completed and a written report of its results communicated to the Grievant and other interested parties, generally within sixty (60) calendar days of receipt of the written complaint. The report shall set forth the finding of the Title IX Coordinator as to whether the conduct complained of constitutes Sex Discrimination in violation of College Policies.
- D. The Grievant can request a reconsideration of the complaint if dissatisfied with the determination of the Title IX Coordinator. The request for reconsideration shall be made in writing within seven (7) calendar days of the Grievant's verified receipt of the written determination and shall be submitted by employees to the Title IX Coordinator, who shall submit request for re-consideration to the appropriate Vice-President. For complaints by an employee, the request shall be submitted to the Vice-President for Administration and Finance and for complaints involving Students, the request shall be submitted to the Vice-President for Academic Affairs. All information gathered by the Title IX Coordinator or Investigator shall be provided to the Vice-President for review, who shall have access to case specific and relevant information, inquire as necessary and appropriate into the case, and shall make a determination and inform the complainant of such within thirty (30) calendar days of receipt of the request for reconsideration.
- E. A person who is dissatisfied with the decision of the aforementioned Vice-President may appeal that determination in writing to the Office of the President within seven (7) calendar days of receiving said decision. The appeal shall set forth with particularity what remedy is being sought, how the process has been violated, and/or

why the decision reached is incorrect. Within fourteen (14) calendar days of receipt of the appeal, the Office of the President shall review the decision to determine that there was compliance with stated procedures, that the process was fair and equitable, and that the outcome satisfies due process. A written determination shall be issued to the Grievant and other interested parties.

- F. The Grievant shall be informed of the right to file a complaint with the appropriate state or federal agency. The right of a person to a prompt and equitable resolution of a complaint submitted hereunder shall not be impaired by the person's pursuit of other external remedies. This process shall neither supersede nor preempt any existing contract governing conditions of employment at this institution.
- G. Anyone at anytime may contact the U.S. Department of Education/Office for Civil Rights for information and/or assistance at (216)522-4970. If the grievance has not been satisfactorily settled, further appeal may be made to the Regional U.S. Department of Education, Office for Civil Rights, 600 Superior Avenue East, Bank One Center, Suite 750, Cleveland, OH 44114-2611.
- H. Inquiries concerning the nondiscriminatory policy may be directed to Director, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

Retaliation against any person who files a complaint of discrimination, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited under college policy, and by state and federal law.

- I. If there is a finding that unlawful discrimination occurred, the College will determine appropriate corrective action. The College will take steps to prevent reoccurrence of any discrimination with remedies including discipline up to and including discharge for the Respondent. College will also provide remedies to the Grievant, as deemed appropriate.

Guests, contractors and other persons who violate the policy are subject to corrective action, which may include removal from campus and termination of contractual agreements. The College may also decide to take action if a Respondent is found to have engaged in inappropriate workplace behavior. Disciplinary action will be determined in accordance with Human Resources practice and any applicable collective bargaining agreement. The Title IX Coordinator, in consultation with appropriate college officials, shall recommend appropriate corrective action and/or discipline.

This Procedure Replaces Procedure 1506 and shall also apply to all claims of Discrimination in violation of College Policy, whether such claim of unlawful Discrimination is made on the basis of sex or another protected category as defined in the College Institution Statement of Non-Discrimination.

## XV. Other Sexual Misconduct Grievance Procedure



In the event of a report or complaint of Sexual Misconduct which does not constitute Sexual Harassment, the following procedure shall be used.

- A. Upon receiving the report, the Title IX Coordinator, or Designee, shall conduct an Initial Review and Assessment of the Report in the manner set forth in Section IX.B.2. to determine if the reported allegations, if true, constitute Sexual Misconduct, which is not Title IX Sexual Harassment.
- B. The Title IX Coordinator may offer the Grievant the option of informal resolution and shall also offer the Grievant the right to file a Complaint of Sexual Misconduct (other than Title IX Sexual Harassment.) If the Grievant does not wish to file a Complaint, the Title IX Coordinator or Designee may file a Complaint on behalf of the Grievant.
- C. The Title IX Coordinator or Designee shall offer Supportive Services as described in Section X. D.
- D. The Title IX Coordinator shall consider whether additional facts and information are necessary to make a determination as to whether a Policy violation has occurred and, if so, shall appoint an Investigator, who may be the Title IX Coordinator, to conduct an investigation in the same manner as described in Section XII. D., providing the parties with the same rights and notices as set forth therein.
- E. At the conclusion of the Investigation, the Investigator shall issue a written Investigation Report which shall contain the information defined in Section XII. E.
- F. The Investigator shall provide a copy of the Investigation Report to the Parties simultaneously and each party shall have 5 days to submit any comments or response in writing to the Investigator.
- G. After considering the Investigation Report and any responses to the report, the Title IX Investigator will issue a Final Report with written findings as to whether there was a violation of the Sexual Misconduct Policy other than Title IX Sexual Harassment. If so, the Title IX Coordinator, or Designee, shall recommend appropriate corrective measures to eliminate the Sexual Misconduct, prevent its recurrence, and remedy its effects, and shall include any recommendations regarding sanctions for consideration and review by the Sanctioning Official.
- H. The Final Report of the Title IX Coordinator shall be delivered to the Parties, simultaneously by email or U.S. Mail or in person. Each party shall have the right to submit an Impact Statement within 5 days to be considered by the Sanctioning Official.
- I. After considering any Impact Statement, the Sanctioning Official shall meet with the Respondent to Determine and Sanction which may include the same sanctions as set forth in Section XII.
- J. The Grievance Process for Sexual Misconduct Other than Title IX Sexual Harassment does not include a Live Hearing or right to cross-examination unless if the matter is

resolved by Informal Resolution; however, the rights and notices to the parties shall otherwise be substantially the same as those set forth in Section XII for the Formal Grievance Procedure for Sexual Harassment. The Title IX Coordinator, or Designee, shall be the Decision-Maker in the Grievance Process.

- K. The Sanctioning Officials shall be the same as the Sanctioning Officials in Section IX. H. (3)
- L. The parties shall have the same rights of appeal as provided in the Formal Grievance Process for Sexual Harassment, Section XII.

XVI. Definitions.

- A. **ACC or College** means Alpena Community College.
- B. **Actual Knowledge** means notice to the Title IX Coordinator or any college official with authority to institute correctional measures, as identified in this Policy.
- C. **Awareness Programs** means community-wide or audience-specific programming, initiatives and strategies that increase audience knowledge and information and resources to prevent violence, promote safety and reduce perpetration.
- D. **Bystander Intervention** means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking.
- E. **Clery Act** means the federal Jeanne Clery Disclosures of Campus Security Policy and Campus Crime Statistics Act.
- F. **Consent:** means a voluntary and affirmative mutually understandable communication of willingness to participate in particular sexual activity or behavior, expressed either by words or clear unambiguous action. Additional information regarding consent can be found in Section VI of this Policy
- G. **Complaint:** See Formal Complaint.
- H. **Complainant** means a person who is alleged to have been subject to Sexual Harassment. The term Complainant is used regardless of whether a Formal Complaint is filed. In referring to complaints of Sexual Misconduct other than Sexual Harassment, the term “complainant” or “grievant” may be used to describe the person make the complaint or grievance.
- I. **Confidential Resources** means those people or entities that are not required, either by law or by policy, to report an allegation of Sexual Harassment or Sexual Misconduct to the Title IX Coordinator and that also provide confidential counseling and support services to people impacted by alleged acts of Sexual

Harassment or Sexual Misconduct, whether or not that person chooses to file a Formal Complaint, file criminal charges, or otherwise participate in any processes referenced in this Policy or its Procedures.

J. **Dating Violence** means violence committed by a person —

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (a) The length of the relationship.
  - (b) The type of relationship.
  - (c) 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.

K. **Decision Maker(s)** means the person or persons appointed by the College to make Determination of Responsibility or a Determination of Sanctions as defined in this Policy. The Decision Maker may be a single individual or a majority of individuals on panel of not more than 3 people. All Decision Makers must be unbiased and free from conflict. All Decision Makers must receive training for Title IX Personnel. A Title IX Coordinator or Deputy Coordinator or other Title IX Personnel who has been involved in an investigation of a Formal Complaint shall not be appointed as a Decision Maker on such Formal Complaint.

L. **Determination of Responsibility** means a written report prepared by the Decision Maker(s) at the end of an investigation into a Formal Complaint. A Determination of Responsibility must identify the section of this Policy or other Code of Conduct alleged to have been violated; describe the procedural steps taken from the receipt of the Formal Complaint through the Determination of Responsibility; including notice, interviews, site visits, methods used to gather other evidence and hearings held. The Determination of Responsibility must set forth findings of fact supporting the determination; conclusion applying the Policy and/or Code of Conduct to the facts; a statement of and rationale for the result as to each allegation, and the permissible basis for appeal, if any. The Determination of Responsibility must be provided to the parties simultaneously. If a Determination of Responsibility is made against a Respondent, remedies shall be established to restore and/or preserve the Complainant's access to the College's education program and activities.

- M. **Determination of Sanctions** means a written report prepared by the Decision Maker(s) following a Determination of Responsibility where the Determination of Responsibility found that a violation of this Policy or other Code of Conduct occurred. The Determination of Sanctions shall include all sanctions imposed on the Respondent and any remedies provided to the Complainant; and the permissible bases for appeal, if any.
- N. **Domestic Violence** means 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, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, 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 Michigan.
- O. **Formal Complaint (See Complaint)** A written document signed and filed by the Complainant or by the Title IX Coordinator alleging Sexual Harassment and requesting that the College investigate the allegations.
- P. **Grievance Procedure for Sexual Harassment** means the grievance procedure set forth under this Policy which shall treat the Complainant and Respondent equitably and shall include due process protections for the Respondent and which complies with the requirements of 34 CFR Part 106.45.
- Q. **Grievance Procedure for Sex Discrimination** means the grievance procedure set forth in this Policy for addressing complaints of Sex Discrimination.
- R. **Impact Statement** means a brief written statement prepared after the Determination of Responsibility by either a Complainant or a Respondent regarding how the violation of this Policy has affected that person and that is used to assist the Decision Maker(s) in determining the appropriate sanctions, interventions, or accommodations.
- S. **Incapacitation** means a person lacks the ability for self-care or to understand the nature of that person's conduct.
- T. **Intimidation** means to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.
- U. **Member of the College Community** means ACC students, faculty, staff, and certain third parties including, but not limited to, guests, contractors, consultants, and their employees.
- V. **Official with Authority (OWA)** means a College official having the authority to implement corrective measures for Sexual Harassment. The term Official with Authority includes the President, Vice-Presidents, Title IX Coordinator, Dean of Students.

- W. **Respondent** means a person who is named in a Formal Complaint and is alleged to have engaged in Sexual Harassment or other violation of this Policy.
- X. **Responsible Employee** means an employee of the College:
1. Who has the duty of reporting incidents of Sexual Misconduct or any other misconduct by students; or
  2. Whom a student reasonably believes has this authority or duty.
- Y. **Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim.
- Z. **Report** means a report made to the Title IX Coordinator's Office of Sexual Harassment or Other Sexual Misconduct prior to or without the filing of a Formal Complaint. A Report may be either verbal or written. In order for a report to require any action by the College, the Report must contain sufficient facts and information to put the Title IX Coordinator's Office on notice that conduct was reported to have occurred which, if true, could constitute a violation of this Policy.
- AA. **Retaliation** means conduct which intimidates, threatens, coerces, or discriminates against an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report, complaint, testified, assisted or participated or refused to participate in an investigation, proceeding or hearing under this Policy. An allegation of Retaliation will be treated as a separate allegation of a violation under this Policy. An exercise of rights protected under the First Amendment does not constitute retaliation.
- Charging an individual with Code of Conduct violations that do not involve Sexual Harassment but arise out of the same facts and circumstances as a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.
- BB. **Sanctioning Official** means the person at ACC responsible for imposing or implementing sanctions or other disciplinary measures for violation of a Policy.
- CC. **Sexual Assault** means an offense that classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation (FBI). Sexual Assault includes, but is not limited to:
1. *Sex Offenses, Forcible*: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
    - (a) Forcible Rape: (See Rape Definition)

(b) Forcible Sodomy:

Oral or anal sexual intercourse with another person forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) Sexual Assault with an Object:

The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) Forcible Fondling:

The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

2. *Sex Offenses, Non-forcible:*

(a) Incest:

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.

(b) Statutory Rape:

Non-forcible sexual intercourse with a person who is under the statutory age of consent of Michigan

DD. Sexual Assault also includes Dating Violence, Domestic Violence and Stalking, as Defined in this Section.

Note: In Michigan, sexual assault is generally punished by the detailed statutory scheme of the Criminal Sexual Conduct Act (CSC Act), MCL 750.520a et seq. The term "sexual assault" is defined as assault with intent to commit criminal sexual conduct. Further, "sexual assault" is also defined as an act, attempted act, or conspiracy to engage in an act of criminal conduct as defined in the CSC Act, or an offense under a law of the United States, another state, or a foreign country

or tribal or military law that is substantially similar to such an offense. See MCL 600.2157a; MCL 600.2950a.

EE. **Sexual Harassment:** See Definition in Section III of Policy

FF. **Stalking** means a course of conduct directed at a specific Complainant that would cause a reasonable person to fear for that person's own or someone else's safety, or to suffer substantial emotional distress. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. For purposes of this definition,

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

In Michigan, stalking is “the willful course of conduct involving repeated or continuing harassment of another individual that would cause 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.” MCL 750.411h (l)(d).

GG. **Student** means a person who has enrolled at ACC, either full-time or part-time. Students also include people who have been admitted to ACC and who, before their first attendance, participate in activities intended only for prospective students (e.g., orientation, leadership activities, camps, athletic training and practices).

HH. **Supportive Measures** means non-disciplinary, non-punitive individualized support services, accommodations, and interventions that are appropriate and reasonably available, and without fee or charge to the Parties, to restore or preserve access to ACC's education program or activity, including measures designed to mitigate the effects of the alleged misconduct and otherwise promote the safety of a Complainant, a Respondent, or Member of the College Community experiencing the effects of Sexual Misconduct.