

**Policy Name:** Title IX: Sexual Harassment - SCHS  
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**Approved by:** RHEI Leadership Team  
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**I. Policy**

Title IX: Sexual Harassment

**II. Purpose**

Bon Secours Memorial College of Nursing (BSMCON or the “College”) is committed to a teaching, learning, and working environment free from all forms of Sexual Harassment, as defined in this Policy.

Consistent with the College’s Nondiscrimination Policy and the U.S. Department of Education’s implementing regulations for Title IX of the Education Amendments of 1972 (“Title IX”) (see 34 C.F.R. § 106 et seq), and other applicable federal and state regulations, the College prohibits Sexual Harassment that occurs within its Education Programs or Activities.

This Title IX: Sexual Harassment Policy (the “Policy”) describes prohibited conduct, explains how individuals may report or file a complaint of Sexual Harassment, sets forth procedures to be followed for promptly and equitably investigating and resolving such complaints, and identifies available resources.

**III. Scope**

This Policy applies to Sexual Harassment (as defined below) that occurs within the College’s Education Programs or Activities.

This Policy applies to all members of the College community, including students and associates. It also applies to contractors and other third parties who are engaged in any College Education Programs or Activity, or who are otherwise interacting with the College, including, but not limited to volunteers, vendors, guests, and visitors (collectively, “Third-Parties”). Other forms of sex discrimination are addressed by the College’s general nondiscrimination policies and complaint procedures.

This Policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the College’s Education Programs or Activities; such sexual misconduct may be prohibited by the College’s Student Code of

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Conduct if committed by a student or personnel policies and standards if committed by an associate.

Consistent with Title IX regulations, this Policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the College’s Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States may be prohibited by the College’s Student Code of Conduct if committed by a student or College personnel policies and standards if committed by an associate.

This Policy sets forth how the College will proceed once it is made aware of possible Sexual Harassment or Retaliation. The Policy is in keeping with our institutional values and is intended to meet our obligations under Title VII of the Civil Rights Act of 1964 (“Title VII”); Title IX of the Education Amendments Act of 1972 (“Title IX”) and regulations promulgated thereunder in 2020 and subsequent guidance; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”); and other applicable federal and state laws.

#### **IV. Definitions**

**Appeals Officer:** The Campus Director and Dean of Academic Affairs (or designee) who adjudicates properly filed appeals from hearing officer determinations or dismissals of Formal Complaints.

**Associate:** Full- or part-time teaching faculty, administrators, classified staff, and wage associates employed by BSMCON.

**Campus:** Any building or property owned or controlled by the College within the same reasonably contiguous geographic area of the College and used by the College in direct support of, or in a manner relating to, the College’s educational purposes. For the purposes of this definition, “controlled” means that the College directly or indirectly rents, leases, or has some form of written agreement for the use of a building or property (or portion thereof).

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

**Coercion:** Direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.

Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to Coercion for purposes of this Policy unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

**Consent:** Words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused student knows or reasonably should have known of such Incapacitation. Consent is also absent when the activity in question exceeds the scope of Consent previously given.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no Consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard or being asleep or unconscious.

**Dating Violence:** Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship,
- The type of relationship, and
- The frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** Domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Virginia, 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 Virginia.

**Education Programs or Activities:** Education Programs or Activities refers to all the operations of the College, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, and community engagement and outreach programs. The term applies to all activity that occurs on Campus or on other property owned or occupied by the College. It also includes off-campus locations, events, or circumstances over which the College exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the College.

**Force:** Physical force, violence, threat, intimidation or coercion.

**Formal Complaint:** A document 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 in accordance with this Policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the College's Education Programs or Activities. A "document filed by a Complainant" means a document or electronic submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

**Hearing Officer:** The individual designated by the Title IX Coordinator and/or Campus Director and Dean of Academic Affairs to conduct the Adjudication Procedures set forth below.

**Hostile Environment Sexual Harassment:** "Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the College's Education Programs or Activities. This may include conduct of a nonsexual nature that is based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

In determining whether a hostile environment exists, the College will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The College will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The College encourages members of the College community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity

- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this Policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

**Incapacitation:** The physical and/or mental inability to make informed, rational judgments. Where alcohol or other drugs are involved, one does not have to be intoxicated or drunk to be considered Incapacitated. Rather, Incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused knew, or a sober, reasonable person in the position of the accused student should have known, that the Complainant was incapacitated. Being intoxicated or drunk is never a defense to a complaint of Sexual Harassment under this Policy. Examples of Incapacitation include unconsciousness, sleep, and blackouts.

**Informal Resolution Facilitator:** The Title IX Coordinator or individual designated by the Title IX Coordinator to conduct informal resolution of Formal Complaints of Sexual Harassment.

**Intimidation:** Unlawful act of intentionally coercing or frightening someone to do (or to not do) something against his or her will.

**Investigator:** The individual(s) designated by the Title IX Coordinator and/or Campus Director and Dean of Academic Affairs to conduct investigations of alleged Sexual Harassment.

**Preponderance of the Evidence:** To find an individual in violation of Sexual Harassments under this Policy, only a preponderance of evidence standard needs to exist. This means it is "more likely than not" that the violation occurred and is less strict than "proof beyond a reasonable doubt". The evidence does not have to be "clear and convincing".

**Public Property:** All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the Campus, or immediately adjacent to and accessible from the Campus.

**Quid Pro Quo Sexual Harassment:** “Quid Pro Quo Sexual Harassment” occurs when an associate of the College conditions the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.

**Respondent:** An individual who has been alleged to be the perpetrator of conduct that could constitute Sexual Harassment.

**Retaliation:** Retaliation is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

**Sexual Assault:** “Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>

- “Rape” is the carnal knowledge of a person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- “Sodomy” is oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
- “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including

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• <sup>1</sup> The College’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments Act of 1972. Those regulations require the College to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).



- instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Virginia law.
- “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Virginia law.

**Sexual Harassment:** Sexual Harassment is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

**Sexual Violence:** In accordance with Code of Virginia § 23.1-806, Sexual Violation is physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Without limiting the definition set forth under Virginia law, Sexual Violence under this Policy includes, without limitation, all forms of Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined under this Policy.

**Stalking:** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: fear for their safety or the safety of others; or suffer substantial emotional distress.

Course of conduct means two or more intentional acts, including but not limited to, acts in which a person directly, indirectly, or through third-parties, by any action, method, device, or means, follows, monitors, surveils, threatens, contacts, or attempts to contact another person, or interferes with another person's property.

This Policy addresses stalking on the basis of sex or gender. Stalking is generally determined to be sex or gender-based when it: is sexual or romantic in nature; is committed by the Complainant's current or former partner of an intimate, romantic, or sexual nature; and/or is related to the Complainant's actual or perceived sex, sexual orientation, gender identify, or gender expression (including Complainant exhibiting or failing to confirm to traditional notions of femininity and masculinity).

Where a report of Stalking involves the alleged behavior of a student, the Title IX Coordinator will determine if the reported conduct meets these criteria. Alleged stalking behavior by a student that does not fall under this Policy may be addressed under the relevant Student Code of Conduct, as applicable.

Where a report of Stalking involves the alleged behavior of an associate, or a Third Party, the Title IX Coordinator, in consultation with the applicable Human Resources unit, will determine if the reported conduct meets the above criteria. Alleged Stalking behavior by an associate, or a Third-party, may be addressed under the Bon Secours Mercy Health Corrective Action policy.

For purposes of this definition only, the definition of “reasonable person” is a reasonable person under similar circumstances and with similar identities to the Complainant.

**Student:** Any person currently enrolled in at least one credit or non-credit course offered by the College.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the College’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the College’s education environment, or to deter Sexual Harassment. Examples of Supportive Measures include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of Campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

**Remedies:** Associates, students, and Third-Parties who commit Sexual Harassment are subject to the full range of College discipline including: verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (i.e., termination or dismissal); physical restriction from College property; cancellation of contracts; and any combination of the same. The College will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the College’s Education Programs or Activities.

## V. Policy Details

The College encourages victims of Sexual Harassment or Retaliation, as defined here, to talk to the Title IX Coordinator about what happened, so victims can get the support they need. All College associates are required to report knowledge of Sexual Harassment to the Title IX Coordinator, except associates bound by confidentiality (professional counselors and clergy).

### **Title IX Coordinator**

The Title IX Coordinator is responsible for the prompt response to reports of Sexual Harassment and Retaliation, as well as training, education, communication, and administration of grievance procedures for handling formal complaints alleging violations of this Policy.

## **PROCEDURES**

### **Applicability of Procedures**

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These reporting, investigation and adjudication procedures (the “Procedures”) apply to all complaints under this Policy.

### **Reporting Procedures and Adjudication**

The College’s primary concern is the safety of its Campus community and members. All reports of Sexual Harassment will be taken seriously. The use of alcohol or drugs never makes the victim at fault for Sexual Harassment. Moreover, victims should not be deterred from reporting incidents of Sexual Harassment.

Prompt reporting is encouraged. Persons may report allegations of Sexual Harassment at any time but are encouraged to make reports promptly in order to maximize the College’s ability to obtain evidence and conduct a prompt, fair, and impartial investigation. Failure to report promptly may result in a loss of relevant evidence and witness testimony and may impair the College’s ability to respond and take appropriate action.

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The names and contact information for the Title IX Coordinator is:

*Title IX Coordinator*

Monique Bates, Director of Compliance and Risk Management  
8550 Magellan Parkway, Suite 1100  
Richmond, VA 23227  
804-627-5457  
[monique\\_bates@bshsi.org](mailto:monique_bates@bshsi.org)

### **Associate Reporting Obligations**

All associates are required to report knowledge of Sexual Harassment to the Title IX Coordinator. This should occur within twenty-four hours.

Any associate who obtains in the course of their employment information that an act of Sexual Violence may have been committed against a student or may have occurred on Campus or on Public Property shall report such information to the Title IX Coordinator as soon as practicable after addressing the immediate needs of the victim.

The above reporting obligations do not apply to associates bound by confidentiality (e.g., professional counselors, clergy) or who obtained the information through any communication considered privileged under state or federal law.

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***Referral to the Sexual Violence Review Committee***

In accordance with Virginia laws, upon receipt of a report of Sexual Violence from a College associate as set forth above, the Title IX coordinator or designee shall promptly report the information, including any personally identifiable information, to the College's Sexual Violence Review Committee ("Review Committee"). The Review Committee shall meet within 72 hours to review the information and shall meet again as necessary as new information becomes available.

If, based on consideration of all factors, the Review Committee, or if the committee cannot reach a consensus, the representative of law enforcement on the Review Committee, determines that the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals, the representative of law enforcement on the Review Committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of Sexual Violence. Such disclosure shall be for the purposes of investigation and other actions by law enforcement. Upon such disclosure, the Title IX Coordinator or designee shall notify the victim that such disclosure is being made. This notification process shall not apply if the law-enforcement agency responsible for investigating the alleged act of sexual violence is located outside the United States.

In cases in which the alleged act of Sexual Violence would constitute felony criminal sexual assault under Virginia law, the representative of law enforcement on the Review Committee shall inform the other members of the Review Committee and shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of Sexual Violence and provide the information received by the Review Committee without disclosing personally identifiable information unless such information was disclosed pursuant to the finding of a health and safety emergency. In addition, if such consultation does not occur and any other member of the Review Committee individually concludes that the alleged act of Sexual Violence would constitute felony criminal sexual assault under Virginia law, that member shall within 24 hours consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of Sexual Violence and provide the information received by the Review Committee without disclosing personally identifiable information, unless such information was disclosed pursuant to a health and safety emergency.

At the conclusion of the review, the Title IX Coordinator and the law-enforcement representative shall each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the Review Committee's considerations, which shall be maintained under applicable state and federal law.

This provision of the Policy does not require a person who is the victim of an alleged act of Sexual Violence to report such violation.

### ***Preliminary Assessment***

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of the Policy (see “Scope”); and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the Policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other College offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the Policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”).

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

### ***Contacting the Complainant***

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”) and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see “Supportive Measures”); to discuss and consider the Complainant’s wishes with respect to such Supportive Measures; to inform the Complainant of the availability of such Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint.

All victims of Sexual Assault and other forms of Sexual Violence will also be provided with information and options regarding:

- Hospital, medical, nurse forensic examiner availability;
- Seeking medical attention;
- Seeking personal counseling and advocacy;
- Collecting and preserving evidence;
- Calling 911 as needed;
- Victim's rights and College responsibilities regarding judicial non-contact, restraining, protective orders, changing academic or employment arrangements, and federal student aid options;
- Available law-enforcement options for investigation and prosecution;
- Available campus options for investigation and adjudication under the College's policies;
- Rights to participate or decline to participate in any investigation;
- Confidentiality provisions that govern information provided by a victim; and
- Available on-Campus resources and any unaffiliated community resources, including sexual assault crisis centers, domestic violence crisis centers, or other victim support services.

### ***Supportive Measures***

If a report is not closed as a result of the preliminary assessment, the College will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the College will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The College will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

The College will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the College's ability to provide the Supportive Measures in question.

The Title IX Coordinator will communicate with each party throughout the investigation to ensure Supportive Measures remain necessary and effective. Failure to comply with the terms of any Supportive Measures that have been implemented may constitute a separate violation of this Policy.

Supportive Measures may be available whether or not the Complainant chooses to report allegation of Sexual Violence to law enforcement. The Title IX Coordinator remains available to assist individuals and provide reasonable remedies throughout the reporting, investigative and adjudicatory processes, and thereafter.

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### ***Emergency Removal and Administrative Leave***

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may, after consultation with appropriate College officials, remove a student Respondent from the College's Education Programs or Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal. Such meeting may, at the sole discretion of the Title IX Coordinator, include other College officials.

In the case of a Respondent who is a non-student associate, and in its discretion, the College may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see "Investigation" and "Adjudication").

For all Third-Party Respondents, the College retains broad discretion to prohibit such persons from entering onto its Campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

### ***Formal Complaint***

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the College investigate and adjudicate a report of Sexual Harassment in accordance with these Procedures. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the College's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified above. No person may submit a Formal Complaint on the Complainant's behalf..

A Formal Complaint should contain the dates and times of the alleged misconduct. The names of persons involved, including potential witnesses, should also be included. The Formal Complaint should outline what occurred in as much detail as possible and the redress that is being sought. Finally, the contact information for the Complainant should be included.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the College if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College community.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the College will commence an investigation and proceed to adjudicate the matter as specified below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation. In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

### ***Consolidation of Formal Complaints***

The College may consolidate Formal Complaints where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this Policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

### ***Dismissal Prior to Commencement of Investigation***

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the Policy (i.e., because the alleged conduct did not occur in the College's Education

Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The dismissal is a final determination unless modified or overturned on appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices or procedures, as appropriate.

### ***Notice of Formal Complaint***

Within five (5) business days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this Policy or a hyperlink to this Policy;



- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
- Notifying the Complainant and Respondent of their right to inspect and review evidence;
- Notifying the Complainant and Respondent of the College's prohibitions on Retaliation and false statements; and
- Information about resources that are available on Campus and in the community.

Should the College elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the College will provide a supplemental written notice describing the additional allegations to be investigated.

### ***Criminal Reporting Procedures***

Reporting as outlined in ADM 9.02 Voluntary Reporting of a Crime and/or to the local police is an option at any time following a Sexual Violence incident. If the victim chooses not to report to the police immediately, he/she can still make the report at a later time. However, with the passage of time, the ability to gather evidence to assist with criminal prosecution may be limited. Depending on the circumstances, the police may be able to obtain a criminal restraining order on the victim's behalf.

### ***Amnesty for Reporting***

To encourage reporting on the part of students, victims of Sexual Harassment will not be charged with alcohol, drug and most other policy violations related to their efforts to seek assistance.

### ***Prohibition against Retaliation***

No individual involved in a report or Formal Complaint alleging a violation of this Policy or participating in the investigation or adjudication of such a complaint shall be subject to Retaliation.

Any report or Formal Complaint of Retaliation will be processed under this Policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. The College retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

Any acts of Retaliation, as defined in this Policy, shall be grounds for disciplinary action, up to and including dismissal for students and termination for associates.

### ***Health/Counseling/Clergy***

The individual may choose to seek advice and assistance from physicians, psychotherapists, professional counselors, clergy, sexual assault and domestic violence counselors and advocates, including individuals who work or volunteer for them.

### ***Civil Lawsuits***

The Complainant may choose to file a civil lawsuit against the Respondent, whether or not criminal charges have been filed. A civil lawsuit provides the Complainant the opportunity to recover actual damages, which may include compensation for medical expenses, lost wages, pain, suffering, and emotional distress.

### ***Protective Orders***

The Complainant may choose to obtain a protective or restraining order. Restraining orders must be obtained from a court in the jurisdiction where the incident occurred. Restraining orders can protect victims who have experienced or are reasonably in fear of Sexual Violence. The Title IX Coordinator can offer assistance with obtaining a protective or restraining order.

### ***Clergy Act***

The College is obligated to report any incidents of Sexual Violence on its annual crime statistics under the Clergy Act. The College, under this Act, is also obligated to issue a timely warning when certain incident of Sexual Violence has occurred.

### ***Non-Reporting***

The individual is strongly encouraged to report any incident of Sexual Violence to the police and/or the College's Title IX Coordinator so that steps may be taken to protect the College community. However, non-reporting is also an option.

## **Investigation Procedures**

### ***Commencement and Timing***

After the written notice of Formal Complaint is transmitted to the parties, the investigator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The investigator will conduct interviews with the Complainant, Respondent, and witnesses. The investigator will also collect any non- testimonial evidence, including physical and electronic evidence, and will preserve evidence in a manner that protects the quality of the evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the College and not with the parties.

The investigation will culminate in a written investigation report that will be submitted to the hearing officer during the hearing process. Although the length of each investigation may vary depending on the totality of the circumstances, the College strives to complete each investigation within sixty (60) calendar days of the transmittal of the written notice of Formal Complaint.

During an investigation, the investigator may receive counsel from College administrators or other parties as needed.

### ***Equal Opportunity***

The College will conduct a prompt, fair, and thorough investigation of all Formal Complaints. During the investigation and any related adjudication, the Complainant and Respondent shall have equal rights, including:

- Respect, dignity, and sensitivity throughout the process.
- An equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence.
- Similar and timely access to all information considered by the investigator.
- Equal opportunity to review any statements or evidence provided by the other party.
- Equal access to review and comment upon any other information independently developed by the investigator. This includes the right to review the investigation report and provide comments on it, if desired, before a hearing.
- The right to receive written notice in advance of any meetings or hearings so that they have sufficient time to prepare for meaningful participation.

Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. The investigating office may require the production of information by the parties by a certain date in order to facilitate a timely resolution. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

### ***Documentation of Investigation***

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes,

audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

### ***Access to the Evidence***

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the College may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) business days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not photograph or disseminate the evidence to the public.

### ***Investigation Report***

After the period for the parties to provide any written response to the evidence, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

### ***Pending Criminal Investigation***

The College will comply with law enforcement requests for cooperation when appropriate. Such cooperation may require the College to temporarily suspend the fact-finding aspect of the Title IX investigation while the law enforcement agency is in the process of gathering evidence. The criminal investigation, however, does not relieve the College of its responsibilities under Title IX. The College will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process of its investigation.

### ***Advisor of Choice***

Both the Complainant and Respondent may ask a support person/advisor to accompany him or her at all stages of the process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the College about the matter without the party being included in the communication. The support person/advisor must agree to maintain the confidentiality of the process.

In the event a party's advisor engages in material violation of the parameters specified in these Procedures, the College may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing and requests the College to provide an advisor, the College will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The College will have sole discretion to select the advisor it provides. The advisor the College provides may be, but is not required to be, an attorney.

The College is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing and requests that the College provide an advisor.

## **Adjudication Procedures**

### ***Hearing Officer***

Upon receipt of the investigation report, the Title IX Coordinator and/or Campus Director and Dean of Academic Affairs will promptly appoint a hearing officer who will oversee the hearing process, rule on questions of relevance and admissibility, resolve all procedural disputes, and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process and in the manner specified in this Policy. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator.

***Hearing Notice and Response to Investigation Report***

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the College's Hearing Procedures. Neither the

pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) business days from the date of transmittal of the written hearing notice.

- A party's written response to the investigation report must include:
- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the College or the hearing officer;
- A list of any witness to whose testimony the party is willing to stipulate based on statements the witness made during the investigation, such that the witness would not need to appear at the hearing if both parties agree;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the College's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;



- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the College provide an advisor for purposes of conducting questioning as specified in these Procedures.
- A party's written response to the investigation report may also include:
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

### ***Pre-Hearing Conference***

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors (if applicable). The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary College personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the College's Hearing Procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

### ***Issuance of Notices of Attendance***

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any College associate or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The College will not issue a notice of attendance to any witness who is not an associate or a student.

### ***Hearing***

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the College's Hearing Procedures. The hearing will be audio recorded. The

audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary College personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;

- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary College personnel. Except for the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them earlier.

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a

way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified here, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this section are met.

### ***Subjection to Questioning***

Attendance at the hearing is voluntary for both a party and witnesses. The hearing officer shall draw no inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. However, the hearing officer may consider in determining the weight of evidence the extent to which the party's or witness's testimony or other evidence has been subject to cross-examination, particularly on matters that are material to the outcome of the case.

Notwithstanding the foregoing, the hearing officer may fully consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the hearing and/or refusal to submit to questioning by the parties' advisors.

### ***Deliberation and Determination***

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of the prohibition against considering the sexual history of the Complainant.

The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of this Policy as alleged in the Formal Complaint.

### ***Discipline and Remedies***

In the event the hearing officer determines that the Respondent is responsible for violating this Policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate College official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

### ***Written Decision***

After reaching a determination and consulting with the appropriate College official and Title IX Coordinator, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;

- A description of the procedural steps taken by the College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate College official;
- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the College's process and grounds for appeal.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the College strives to issue the hearing officer's written determination within fourteen (14) business days of the conclusion of the hearing.

### **Dismissal During Investigation or Adjudication**

The College shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the Policy.
- The College may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this provision, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate. A dismissal pursuant to this provision is presumptively a final determination as it pertains to this Policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

### **Appeal**

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome; or
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.
- No other grounds for appeal are permitted.
- Appeals must be filed in writing with the Campus Director and Dean of Academic Affairs' office within ten (10) business days of receipt of the notice of dismissal or written determination. The appeal must include:
  - Name of the Complainant;
  - Name of the Respondent;
  - A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it; and,
  - Requested action, if any.



Promptly upon receipt of an appeal, the Campus Director and Dean of Academic Affairs' office will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the Campus Director and Dean of Academic Affairs' office determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, it will dismiss the appeal and provide written notice of the same to the parties.

If the Campus Director and Dean of Academic Affairs confirms that the appeal is timely and invokes at least one permitted ground for appeal, the Campus Director and Dean of Academic Affairs will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) business days. The Campus Director and Dean of Academic Affairs will also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

The Campus Director and Dean of Academic Affairs will resolve the appeal within fifteen (15) business days of receiving the appeal and any written opposition to it, or from the date of any meetings with the parties and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The decision of the Campus Director and Dean of Academic Affairs is final.

The Campus Director and Dean of Academic Affairs shall issue a short and plain, written statement of the resolution of the appeal that explains the outcome of the appeal and the rationale. The written statement shall be

provided to the Complainant, the Respondent, and the Title IX Coordinator within three (3) business days of the resolution.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the Campus Director and Dean of Academic Affairs has resolved all appeals, either by dismissal or by transmittal of a written decision. No further review beyond the appeal is permitted.

### **Treatment Records and Other Privileged Information**

During the investigation and adjudication processes, the investigator and hearing officer are not permitted to access, consider, disclose, permit questioning concerning, 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 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; or
- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;

unless the College has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or hearing officer may consider any such records or information otherwise covered by this section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

### **Sexual History**

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, 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.

Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this section.

### **Informal Resolution**

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another College official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and

- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the College, except as otherwise provided in the resolution

itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the College. Informal resolution pursuant to this section is not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

If an informal resolution process does not result in a resolution within thirty (30) calendar days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication procedures that were suspended due to the informal resolution.

Informal resolution will not be permitted if the Respondent is a non-student associate accused of committing Sexual Harassment against a student.

### **Presumption of Non-Responsibility**

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

### **Conflicts of Interest, Bias, and Procedural Complaints**

The Title IX Coordinator, investigator, hearing officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these College officials has a material conflict of interest or material bias must raise the concern promptly so that the College may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

### **General Objections**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the College may evaluate the matter and address it, if appropriate.

### **Third-Parties**

The College does business with various vendors, contractors, and other Third-Parties who are not students or associates of the College. Notwithstanding any rights that a given Third-Party Respondent may have under this Policy, the College retains its right to limit any Third-Party's access to campus for any reason. And the College retains all rights it enjoys by contract or law to terminate its relationship with any Third-Party irrespective of any process or outcome under this Policy.

### **Special Advice to Victims of Sexual Assault**

In accordance with the Clery Act, Sexual Assault is a crime that will, with the Complainant's consent, be reported to the police. Sexual Assault is never the victim's fault. Every attempt will be made to keep the victim free from any suggestion that he/she is responsible or was "contributorily negligent" or assumed the risk of being a victim of Sexual Assault. Victims of Sexual Assault are strongly encouraged to seek immediate medical attention at an area hospital or medical clinic. If the victim wishes, he/she will be assisted in seeking prompt medical attention.

If at all possible, the victim should not change clothes, shower, bathe, douche, or urinate. Emergency room personnel are trained to check for injuries, as well as collect physical evidence. It is important to preserve evidence as it may be necessary for the proof of Sexual Assault should you decide to pursue charges through a police department or other relevant law enforcement authority.

Hospital personnel are obligated to contact proper authorities regarding the assault. Although not obligated to do so, victims of Sexual Assault and other forms of sexual harassment are highly encouraged to take advantage of victim's services to help them understand their options for off-campus proceedings and to receive counseling specific to their needs.

### **Confidentiality**

The College will keep confidential, to the extent possible, the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness.

All matters will be handled in compliance with BSMCON Policy ADM 3.01 Family Educational Rights and Privacy Act (FERPA). The College will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the College may reveal the identity of any person or the

contents of any record if permitted by FERPA, if necessary to carry out the College's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this Policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the College's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this Policy.

While the College will maintain confidentiality specified in this section, the College will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this Policy.

Note that certain types of Sexual Harassment are considered crimes for which the College must disclose crime statistics in its Annual Security Report that is provided to the Campus community and available to the public, or reports of suspect abuse of a minor, which must be reported in accordance with ADM 9.14 Suspected Child Abuse or Neglect. These disclosures will be made without including personally identifying information.

### **Other Violations of This Policy**

Alleged violations of this Policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students or personnel policies for associates.

### **Training**

The College will ensure that College officials acting under this Policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, College provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

### **Recordkeeping**

The College will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the College's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

### **Disciplinary Action**

If it is determined that the Policy was violated, the Respondent will be subject to discipline, up to and including dismissal from College employment (associate) or expulsion from the College (student). The severity of the discipline will be commensurate to the severity of the violation. Discipline will be applied consistently so that individuals violating the same standard or policy receive similar discipline. In cases of Sexual Assault, the minimum discipline will consist of suspension.

Discipline may be applied separately or in combination with another disciplinary actions. Previous behavior or conduct violations will be considered in determining discipline.

In certain circumstances, a student may be referred for specialized help (e.g., psychological assistance, consultation with a counselor, and/or social service agencies) in lieu of or in combination with disciplinary action. If this occurs, the student will be expected to periodically meet with the Title IX Coordinator, or designee, who will review the student's progress.

Denial of readmission may be imposed upon a student who has violated this Policy and has withdrawn from the College prior to or during disciplinary proceedings.

### **Transcript Notations**

A prominent notation shall be made on the academic transcript of a student who has been suspended for, has been dismissed for, or withdraws from the College while under investigation for an offense involving sexual violence.<sup>2</sup>



The notation shall state that the student was suspended for, was dismissed for, or withdrew from the College while under investigation for an offense involving sexual violence under the College's Title IX: Sexual Harassment Policy. Such notation shall be substantially in the following form: "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of the College's Title IX: Sexual Harassment Policy."

*Removal*

When a student respondent is determined not to have committed an offense involving Sexual Violence under the College's Title IX: Sexual Harassment Policy, the Campus Director and Dean of Academic Affairs and Dean of Student Services will be notified to direct the Registrar to remove the transcript notation.

*Expungement*

The College shall remove from a student's academic transcript any notation placed on such transcript due to such student's suspension if the student has completed the term

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<sup>2</sup> These procedures refer to notations placed by Bon Secours Memorial College of Nursing on a student's transcript.

and any conditions of the suspension and has been determined by the College to be in good standing according to its policies and practices.

A student may petition the Dean of Student Services to request expungement of the notation for good cause shown and after a period of three years.<sup>3</sup>

The Dean of Student Services will review petitions for early record expungements as well as transcript notation expungements and will submit a recommendation to the Campus Director and Dean of Academic Affairs for final approval. The decision will be based upon the following criteria:

1. The nature of the violation(s) and the resulting impacts.
2. The student's behavior after the violation(s) and their present demeanor.
3. The student's demonstrated level of reflection and growth.

After a petition is evaluated, the student will receive written notification of the decision. That decision will be final.

It is important to note that a student with an expunged record or transcript notation may still need to disclose information about their disciplinary history to third parties, including potential employers, other universities' admissions offices, a professional board, etc.

**Education and Prevention**

The College is committed to helping all students achieve a realistic understanding of the effects of Sexual Harassment for themselves, victims, and society. Above and beyond potential disciplinary action resulting from Sexual Harassment, the College recognizes the need and responsibility to provide information regarding Sexual Harassment.

The following activities and services will be offered at the College in an effort to prevent sexual harassment:

- Publication of information on Sexual Harassment and the prevention of Sexual Harassment on the College website.
- Information regarding College publications, courses, and training opportunities are routinely announced and disseminated throughout the College community.
- The Title IX Coordinator will maintain a list of referral services that specialize in Sexual Assault. Students requesting assistance will be referred to the appropriate public agencies, while making every effort to protect the individual's confidentiality.

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<sup>3</sup> A student may only petition to have one notation removed from the student's transcript. Any subsequent violations that result in a transcript notation will not be eligible for removal.

- To assist College faculty and staff, Title IX Coordinator and Office of Student Success, maintains a list of referral services that specialize in Sexual Assault. Associates requesting assistance will be referred to the appropriate agencies, while making every effort to protect the individual's confidentiality.

### **Resources**

The College provides resources to students and associates regarding education and treatment programs for the awareness of rape, acquaintance rape and other forcible and non-forcible sexual offenses.

Educational modules pertaining to Sexual Assault and safety awareness are completed annually by all students enrolled at the College. Audio visual resources on safety awareness are available in the library. These may be used for curriculum infusion. Pamphlets regarding sexual assault are made available to students as well.

Empathia Student Life Resource Program In compliance with Virginia Code § 23.1-807A, the College has an agreement with Empathia to provide sexual assault victims with immediate access to confidential assistance.)

855-695-2818

<https://www.StudentLifeServices.com> (Password: BSMHSTUDENT)

YWCA of Richmond, Richmond, VA 23219 Business: 804-980-7301

Hotline: 804-643-0888

Website: <http://ywcarichmond.org>

Chesterfield County Domestic Violence Resource Center  
 P.O. Box 40  
 Chesterfield, VA 23832-0040  
 804-768-4783

[www.chesterfield.gov](http://www.chesterfield.gov)

Hanover Safe Place. Ashland, VA 23005 Toll Free: 888-370-SAFE (7233)

Local Hotline: 804-752-2702 [www.hanoversafeplace.com](http://www.hanoversafeplace.com)

Safe Harbor

P.O. Box 17996 Richmond, VA 23226 804-249-9470

[www.SafeHarborShelter.com](http://www.SafeHarborShelter.com)

**VI. Attachments**

None

**VII. Related Policies**

ADM 3.01 Family Educational Rights and Privacy Act (FERPA)

ADM 3.05 Student Conduct – Rights and Responsibilities

ADM 9.02 Voluntary Reporting of a Crime

ADM 9.12 Nondiscrimination

ADM 9.14 Suspected Child Abuse or Neglect

Bon Secours Mercy Health Corrective Action policy

Bon Secours Mercy Health Non-Harassment and Non-Discrimination policy

**VIII. Disclaimers**

Nothing in this Policy creates a contractual relationship between Bon Secours Memorial College of Nursing (BSMCON) and any party. BSMCON, in its sole discretions, reserves the right to amend, terminate or discontinue this Policy at any time, with or without advance notice.

**IX. Version Control**

<b>1.0</b>	08/12/2020	Revisions and new template	Dean of Administration
<b>1.1</b>	10/13/2020	Correction of Typographical error	Policy Committee Chair
<b>2.0</b>	10/27/2021	Revisions on pages 33-34 as recommended by Legal	Dean of Administration

2.1	06/22/2022	Revisions as a result of annual review recommendations from Legal	Dean of Administration
2.2	05/08/2023	Annual review	Dean of Administration