

13.04 Procedure for the Resolution of Discrimination and Sexual Harassment Complaints

Oversight. The Title IX/Civil Rights Coordinator (“Coordinator”) will be responsible for overseeing the prompt, fair and impartial investigation and resolution of reports of discrimination and sexual harassment to the College.

Definitions:

- a. “Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment or discrimination.
- b. “Formal Complaint” is a document filed by a Complainant or signed by the Coordinator alleging sexual harassment against a Respondent and requesting that the College investigate the allegation.
- c. “Mediation” is defined as an informal and confidential way for parties of a formal complaint of sexual harassment, a discrimination complaint, or any other complaint in which the Coordinator elects to initiate an investigation, to resolve the complaint prior to an investigation. It is only available as an alternative means of resolving a complaint if the alleged discrimination or sexual harassment does not involve violence or abuse.
- d. “Notice of a Complaint” means actual knowledge of a complaint, which requires the College to respond, when such notice is given by the Complainant, or a third party on behalf of the Complainant, verbally or in writing, to the Coordinator or to an official with authority to institute corrective measures on the College’s behalf.
- e. “Respondent” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or discrimination.
- f. “Sexual Harassment” shall mean any conduct on the basis of sex that satisfies one or more of the following:
 1. “Quid Pro Quo” - A College employee conditioning education or employee benefits on their participation or non-participation in unwelcome sexual conduct;
 2. “Hostile Environment” – Unwelcome conduct that a reasonable person would determine to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College’s education program or activity, or to the work place;
 3. “Sexual Assault” Sexual Assault shall mean any sexual act or acts committed on a person who has not consented to such act or acts or for which a person is incapable of consenting due to age, intoxication or other reasons. Sexual assault includes, but is not limited to

- i. Rape, or attempted rape;
- ii. Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a person upon another person without consent, of the person's breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of the body parts or areas when such touching would be reasonably and objectively offensive;
- iii. Any sexual act in which there is force, violence, or use of duress or deception upon the victim;
- iv. Any sexual act perpetrated when the victim is unable to give consent; and,
- v. Sexual intimidation, which includes, but is not limited to:
 - A. Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her consent;
 - B. Stalking or cyber-stalking; and,
 - C. Engaging in indecent exposure.

4. "Dating Violence" means violence committed by a person:

- i. Who is, or has been, in a relationship of a romantic or intimate nature with the victim;
- ii. Where there is, or has been, abuse, as defined in this policy, or a pattern of behavior in the relationship which is used to establish power and control over the victim through fear and intimidation.
 - A. "Pattern of Behavior" means behavior by one party in an intimate relationship that is used to establish power and control over the other person in the relationship through fear and intimidation.
 - B. A pattern of behavior is determined based on the repeated use of words and/or actions and inactions in order to demean, intimidate, and/or control another person. This behavior can be verbal, emotional and/or physical.
 - C. Examples of abuse, which can occur singly or as a pattern of behavior, include but are not limited to, slapping, pulling hair, punching, damaging property, driving recklessly to scare someone, name calling, humiliating one in public, harassment directed toward a current or former partner or spouse, threats of abuse, such as threatening to hit, harm or use a weapon on another, or other forms of threat.
- iii. Whether dating violence has occurred shall be based on the existence of an amorous relationship which shall take into consideration the following factors:

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

5. “Domestic Violence” means abuse committed by a current or former spouse of the victim; by a person who is cohabiting with the victim where they hold themselves out as a couple, with or without a child in common; by a person living separate and apart from the victim with a child in common; or by a person in a current or former substantive dating relationship with the victim, or by any person similarly situated to a spouse or intimate partner of the victim under the domestic violence laws of the State of Delaware; or by a person against a family member as that term is defined in §901(12) , Title 10 of the Delaware Code; or by any person against an adult or youth victim who is protected from that person’s acts under the domestic violence laws of the State of Delaware.

6. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

i. “Course of conduct” means two or more acts, including but not limited, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follow, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. It can include, but is not limited to:

- A. Non-consensual communication (face-to-face, telephone, email)
- B. Threatening or obscene gestures;
- C. Surveillance/following/pursuit;
- D. Showing up outside the targeted individual’s classroom or workplace;
- E. Sending gifts (romantic, bizarre, sinister, or perverted)
- F. Making threats

ii. “Emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

iii. “Reasonable person” means a reasonable person under the circumstances and with similar identities to the victim.

f. “Supportive Measures” are non-disciplinary, non-punitive individualized services designed to preserve the Complainant’s access to educational programs or activities without unreasonably burdening the Respondent.

Receipt of a Complaint. Upon receipt of a complaint, the Coordinator shall initially determine whether the complaint states a claim of discrimination or sexual harassment, or other form of sexual misconduct; provided, however, that no determination that a complaint fails to state a claim for discrimination or sexual misconduct shall be made without first speaking with the Complainant.

Dismissal of Complaint.

- a. The Coordinator shall dismiss allegations of misconduct that:
 1. In a complaint alleging sexual harassment:
 - i. The Coordinator determines the alleged conduct does not meet the definition of “sexual harassment” as set forth herein even if proved;
 - ii. The alleged conduct did not occur in the College’s education program or activity;
 - iii. The alleged victim was not participating in, or attempting to participate in, a College education program or activity at the time the misconduct was reported; or
 - iv. The alleged conduct did not occur against a person in the United States.
 2. In a complaint of discrimination not alleging sexual harassment:
 - i. The Coordinator determines the alleged conduct does not state a claim for unlawful discrimination even if proved; or
 - ii. The Coordinator determines that the person against whom the alleged conduct is directed is not a member of a protected class
 3. In a complaint of retaliation where the facts do not include allegations of sexual harassment as defined herein:
 - i. The Coordinator determines that the Complainant was, or is, not engaged in protected activity prior to, or during, the time that the alleged conduct occurred.
- b. The Coordinator may, at his or her discretion, dismiss a formal complaint or allegations within a formal complaint if:
 1. The complainant informs the Coordinator in writing that he or she wishes to withdraw the formal complaint or specific allegations contained therein;
 2. The respondent is no longer enrolled or employed at the College;
 3. Specific circumstances prevent the College from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein; or,
 4. There is no genuine issue of material fact to support the allegations after investigation when the evidence is viewed in the light most favorable to the Complainant.

- c. If the Coordinator dismisses the complaint or allegations of conduct contained therein, he or she shall provide the parties with a written notice of a dismissal, whether the dismissal is mandatory or discretionary, and the reasons for the dismissal.
- d. The Coordinator shall provide the parties written notice of his or her decision to dismiss the complaint within 10 days after the parties' responses to the investigative report are due.

Claims of Discrimination not Involving Sexual Harassment. Where a claim of discrimination has been stated that does not include a claim of sexual harassment, the Coordinator shall immediately communicate, or attempt to communicate, with the alleged victim of discrimination to determine whether he or she would like to move forward with his or her complaint. If the Complainant wishes to do so, the complaint shall be assigned to an Investigator for investigation, unless the parties agree to mediate in a case where mediation is appropriate.

Claims of Sexual Harassment; Formal Complaint. Where a claim of sexual harassment has been stated, the Coordinator shall immediately communicate, or attempt to communicate with the alleged victim to determine whether he or she would like to file a formal complaint. If a formal complaint filed, the complaint shall be assigned to an Investigator for investigation, unless the parties agree to mediate in a case where mediation is appropriate.

- a. A Complainant must be participating in or attempting to participate in an educational program or activity of the College within the United States at the time a formal complaint is filed.
- b. A formal complaint may be filed with the Coordinator in person, by mail, or by electronic mail, by using the Coordinator's contact information.
- c. The Coordinator may also sign a formal complaint on behalf of the Complainant if the Coordinator is free from conflict or bias and is or was not a Complainant or a party during a grievance process involving the alleged victim or Respondent.
- d. The Coordinator may, at his or her discretion, investigate an allegation of sexual harassment when the Complainant elects not to file a formal complaint.
- e. The Coordinator may, at his or her discretion, consolidate formal complaints where the allegations arise out of the same facts and/or occurrences.

Notification to the Respondent. A Respondent named in a formal complaint of sexual harassment, a discrimination complaint, or any other complaint in which the Coordinator elects to initiate an investigation, must receive notification of the complaint as soon as reasonably practical after the Coordinator determines that an investigation into the allegations of the complaint are warranted.

Supportive Measures. Upon receipt of a complaint, the Coordinator shall promptly contact the Complainant and Respondent to request if either party is in need of supportive measures. Such measures may include, but are not limited to, referrals for counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus and mutual restrictions of contact between the parties. If, at any point during the complaint, investigative, or disciplinary process, the Coordinator deems it necessary for the protection of any member of the College community, the Coordinator may institute such measures on behalf of the Complainant, the Respondent, or any witness involved in the complaint.

Right to an Advisor. The Complainant and the Respondent shall have the right to be accompanied by an advisor, including an attorney of his or her own choosing, for purposes of conducting direct and cross examination of the parties and their witnesses, and otherwise acting on behalf of the party throughout the hearing or any informal resolution process.

- a. An advisor may be removed from any proceeding if he or she refuses to abide by the instructions of the Hearing Officer; is disruptive to the proceeding; or is disrespectful to any participant in a hearing.
- b. The advisor may not attend a proceeding without his or her advisee present.
- c. If a party does not have an advisor to assist him or her at the hearing or in connection with a mediation, the College will provide an advisor to the party free of charge for purposes of conducting direct and cross examination of the parties and their witnesses, and otherwise acting on behalf of the party throughout the hearing or mediation.
- e. Notwithstanding the foregoing, neither party may use an advisor for the purposes of obstructing or delaying the investigation or hearing, intimidating a party or witness, or creating a legitimate fear of retaliation in the other party.

Mediation. When mediation is appropriate, the Coordinator shall notify the parties of the option to resolve the complaint through mediation. Mediation shall not occur unless the Coordinator receives consent of all parties to the complaint, which shall be documented by an agreement to mediate. The parties shall have 5 days from notification of the option to mediate to advise the Coordinator of their agreement to mediate. If either party fails to timely notify the Coordinator, the Coordinator shall immediately initiate an investigation of the complaint.

- a. Mediation may be discontinued at any time: (1) by either party; (2) by the mediator when he or she feels that further efforts to mediate would be non-productive; or (3) when a voluntary agreement has been reached.
- b. The mediator shall notify the Coordinator of the success or failure of the mediation. If the mediation results in a voluntary settlement, a copy of the signed agreement shall also be provided to the Coordinator.

- c. If the parties are unable to resolve the complaint through mediation, the Investigator shall immediately begin or resume his or her investigation.

Investigation of a Complaint. The Coordinator shall promptly assign a formal complaint of sexual harassment, a discrimination complaint, or any other complaint in which the Coordinator has cause to initiate an investigation, to a Title IX/Civil Rights investigator (“Investigator”).

- a. The Investigator shall contact the Complainant and the Respondent to schedule separate initial meetings as soon as practicable after his or her appointment or, if mediation was offered, after it was declined or determined unsuccessful. For good cause shown, and upon approval from the Coordinator, the Investigator may obtain additional time to conduct the initial meetings.

- b. The Investigator:

1. Shall have access to such documents or video in the possession of the College, including student records, public safety records or personnel files, that he or she believes may contain relevant information or which may lead to the discovery of relevant information;
 2. Shall interview both parties involved in the complaint, whenever possible, and/or may interview individuals who may have observed the alleged misconduct or have relevant knowledge of the incident. The investigation may also include interviews with experts, where applicable.
 3. May inspect and photograph sites relevant to the alleged incident(s) and collect and preserve relevant evidence (which shall be coordinated with the law enforcement agency having jurisdiction over the alleged incident when a corresponding criminal complaint has been filed).
 4. In a sexual harassment complaint, shall not access, consider, disclose, or otherwise use a party’s records that are 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 Investigator obtains that party’s voluntary, written consent.
- c. The Investigator shall submit to the Coordinator a written investigative report specifically describing his or her investigation of the complaint, including:
 1. All documents, videos, records, including student, public safety, personnel records relevant to the investigation;
 2. Details of interviews conducted of the parties and any witnesses;
 3. Inspections of sites, photographs, or collection of other evidence relevant to the allegations stated in the complaint;
 4. And any other evidence the Investigator deemed relevant to his or her investigation.

- d. A request for extension of time submitted in writing to the Coordinator at least one day before the Investigative Report is required to be submitted may be granted if good cause is shown.
- e. The Investigator shall submit the Investigative Report to the Coordinator on or before the date of submission, unless an extension of time to complete the report has been granted.

Dissemination of the Investigative Report.

- a. Upon receipt of the Investigative Report, the Coordinator shall simultaneously send a copy of the report and any evidence used by the Investigator to complete his or her report to each party and their respective advisors. The names and contact information for all witnesses other than the Complainant and Respondent shall be redacted.
- b. The parties shall have 10 days to inspect, review and respond to the report.
- c. The parties or their advisors shall submit their responses to the Investigative Report, if any, to the Coordinator within ten (10) days after the report was sent to them.

Scheduling the Hearing. Appointment of Advisors.

- a. If the complaint is not dismissed, the Coordinator shall promptly advise the parties and advisors of the date and time of the hearing, but in any event such notice of a hearing date and time shall be given no later than forty (40) days after the investigative report was sent to the parties and their advisors, unless good cause is shown.
 - 1. Each party shall notify the Coordinator of the name and contact information of their respective advisor who will be attending the hearing, no less than seven (7) days from the scheduled date of the hearing.
 - 2. If a party does not have an advisor, or if a party fails to provide the Coordinator with the name and contact of their advisor, the Coordinator will assign an advisor of the party's choosing from a list of trained individuals to assist the party at the hearing.
 - 3. If a party refuses to have an advisor for the hearing, the party shall advise the Coordinator in writing of his or her intention no less than seven (7) days from the scheduled date of the hearing. Regardless, the Coordinator shall assign an advisor to assist the party at the hearing. The advisor shall assist the party throughout the hearing, unless the party clearly states to the Hearing Officer, on the record, that he or she does not need or want the assistance of an advisor.
- b. A continuance of the Hearing may be granted upon request by either party, or *sua sponte* by the Hearing Officer, for good cause shown.

Hearing Process.

- a. A Hearing Officer shall preside over the hearing, which shall be conducted “live”.
 1. A “live” hearing is a hearing conducted with all parties physically present in the same geographic location; or, at the Hearing Officer’s discretion, virtually for any or all parties, witnesses and other participants. If a hearing is held virtually, technology must be made available to enable participants to simultaneously, and in real time, see and hear each other.
 2. At the request of either party, the Coordinator must provide for the entire live hearing (including direct and cross-examination) to occur with the parties located in separate rooms and with technology to enable the parties to see and hear each other simultaneously and in real-time.
- b. Each party shall provide a list of all witnesses he or she expects to present at the hearing and a brief summary of the facts to which they are expected to testify within 7 calendar days prior to the date of the hearing.
- c. Direct and cross examination of the parties and witnesses shall be conducted by each party’s advisor and never by the party personally.
- d. Only relevant direct and cross examination questions, including those questions challenging credibility, shall be permitted. The Hearing Officer shall first determine the relevancy of the question before an answer is provided. Where there is a decision to exclude a question, the Hearing Officer shall explain on the record his or her decision to exclude the question as not relevant.
- e. All hearings shall be recorded by audio or audiovisual recording, or by transcript, which shall be retained by the College for a period of seven (7) years from the date it was created.

Decision of the Hearing Officer. Burden of Proof.

- a. Allegations of sexual harassment or discrimination shall be substantiated if there is sufficient evidence to prove, by a preponderance of the evidence, that a respondent is responsible for committing such acts of sexual harassment or discrimination against the complainant. Hearsay is admissible to prove responsibility for misconduct, but may not be the sole basis for a decision.
- b. The Hearing Officer shall have ten (10) days to issue a written decision regarding responsibility. The written decision shall include, with specificity, findings of fact, conclusions regarding whether the alleged conduct occurred, the rationale for the result as to each allegation, disciplinary sanctions imposed on the Respondent, if any, and what remedies will be provided to the Complainant, if any.
- c. The written decision shall be sent simultaneously to the parties with notice of their right to appeal the decision electronically or through first class mail to their last known email or physical address.

Appeals.

- a. A dismissal of a complaint or any allegations contained therein, or a written decision of a Hearing Officer, may be appealed by either the Complainant or Respondent based on the following:
 1. A procedural irregularity that affected the outcome of the matter;
 2. Newly discovered evidence that could affect the outcome of the matter; or,
 3. The Coordinator or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter.
- b. Both parties shall have a right to appeal the decision of the Hearing Officer, or a dismissal of a complaint or any allegations contained therein, by providing notice of their request for an appeal to the Coordinator within ten (10) calendar days from the date of the written decision. The appealing party shall advise the Coordinator in writing, with specificity, of his or her reasons for appeal, together with all alleged facts, argument, and exhibits to support such appeal. If the request for appeal fails to state one of the reasons for appeal set forth above or fails to support the reasons for appeal with sufficient facts, the request for appeal shall be denied.
- c. Review of a Hearing Officer's decision on appeal shall be made by an Appeals Officer, who shall not have participated in the investigation, hearing or any other prior aspect of the formal complaint, and shall be based on, and limited to, one of the reasons for appeal stated herein.
- d. Upon receipt of a valid request for an appeal from a party, the Coordinator shall promptly notify the non-appealing party of the request for appeal and provide the Appeals Officer and the non-appealing party with the materials submitted by the appealing party. The non-appealing party will have 10 calendar days to submit his or her written response to the appeal.
- e. The Appeals Officer shall issue a decision on appeal within a reasonable time frame affirming or overturning, *in toto* or in part, the decision of the Hearing Officer. The Appeals Officer's written decision shall include, with specificity, his or her conclusions in regard to the decision of the Hearing Officer, the reasons for affirming or overturning the decision, the findings of fact relied on to affirm or overturn the decision, any, if applicable, changes in the disciplinary sanctions to be imposed on the Respondent, if any, as well as any changes to the remedies to be provided to the Complainant, if any.
- f. The written decision of the Appeals Officer shall be sent simultaneously to the parties electronically and/or via first class mail to their last known email or physical address.
- g. The decision of the Appeals Officer shall be final.

Sanctions.

Sanctions for violations of the College's Policy on Discrimination or Policy on Sexual Harassment include counseling, verbal and/or written reprimand, improvement or corrective action plan, suspension and/or dismissal

from the College's education programs or activities, termination from employment at the College, exclusion from academic participation or other college sponsored programs, and/or denial of access to College facilities as determined through these procedures.

Timeframe for Resolving Complaints.

Every reasonable effort shall be made to conclude the investigation and resolve the complaint within a reasonable timeframe following receipt of the complaint.

Confidentiality and Document Retention.

- a. The Investigator, Coordinator, or anyone having possession of any work product relating to the complaint shall not disclose, distribute, copy or transfer said work product to the parties or any third party. "Work product" is defined as any information gathered by the Investigator for purposes of conducting an investigation of a complaint of discrimination or sexual harassment, other than the Investigator's report and copies of any evidence submitted by the Investigator with their report.
- b. The complete file, which includes, but is not limited to the complaint, all work product, the investigative report and all dispositions, decisions and/or determinations shall be maintained at the Office of the Title IX Coordinator for a period of seven (7) years from the date a decision of discrimination/sexual harassment becomes final.
- c. The Coordinator shall maintain confidentiality of the file, which shall only be disclosed by order of a court of competent jurisdiction or by applicable state or federal law.
- d. When a finding of discrimination/sexual harassment is final, Hearing Officer's/Appeal Officer's decision and a record of the sanctions imposed shall be maintained as part of the student's educational record or employee's personnel file, as applicable.

Conflicts of Interest.

- a. The Investigator and, if applicable, the Hearing Officer and Appeals Officer, shall disclose to the Title IX Coordinator of any potential conflicts of interest which would prevent him or her from participating on the investigation or resolution of alleged discrimination or sexual harassment.
- b. The Complainant or Respondent shall advise the Title IX Coordinator, in writing, of any real or perceived conflicts of interest posed by an Investigator, Hearing Officer or Appeals Officer as soon as reasonably practical after they are aware of the potential or perceived conflict, together with the reasons they believe a conflict exists

c. If any conflict of interest exists between the Investigator, Hearing Officer or Appeal Officer and any of the parties, the Coordinator shall take such action as they deem necessary to eliminate the conflict, including, but not limited to, use of a different Investigator, Hearing Officer or Appeals Officer.

Prohibition Against Retaliation.

It is a violation of College policy for any member of the College community to retaliate against the Complainant, the Respondent, or any person who participates in a discrimination or sexual misconduct investigation or proceeding. While all discrimination and sexual harassment allegations will be reviewed in accordance with these procedures, the College community is advised that a claim of discrimination or sexual harassment is not proof of prohibited conduct, and an accused person is innocent until misconduct has been established by a preponderance of the evidence. Anyone who believes that he/she has been subject to retaliation is encouraged to report such behavior to the Coordinator. A finding of retaliatory conduct is subject to disciplinary action, up to and including termination.

Effective Date

The procedures set forth herein shall apply to reports of discrimination/sexual harassment received by the Coordinator on or after August 14, 2020. All prior reports of discrimination/sexual harassment will continue to be handled in accordance with the policies and procedures in effect at the time the alleged misconduct was reported.