

THE CLAREMONT COLLEGES

Title IX

Grievance Process

Effective August 14, 2020



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I. Introduction

This Policy applies to member institutions (except Keck Graduate Institute) that compose The Claremont Colleges.

The Claremont Colleges is composed of seven (7) individual Institutions¹:

- Pomona College
- Claremont Graduate University
- Scripps College
- Claremont McKenna College
- Harvey Mudd College
- Pitzer College
- Keck Graduate Institute (This policy does not apply to Keck Graduate Institute)

Collectively, the member institutions (except for Keck Graduate Institute) are referred to as TCC throughout this policy.

Sexual harassment, as defined by this Title IX Policy (Policy), is prohibited within all of TCC. TCC will respond promptly and effectively to reports of sexual harassment.

This Policy addresses TCC's responsibilities and procedures related to sexual harassment, as defined in this Policy, to ensure an equitable and inclusive education and employment environment. The Policy defines sexual harassment and retaliation, and explains the administrative procedures TCC uses to resolve reports of such conduct.

This Policy outlines the Formal Grievance Procedures TCC will follow to ensure a prompt and equitable resolution of student and employee complaints alleging sexual harassment. The Institutions are not precluded from investigating other conduct that, if proven, would not constitute sexual harassment under this Policy but may constitute a violation of other Institution policies.

Title IX Coordinator. Each Institution within TCC shall designate a Title IX Coordinator to oversee and ensure compliance with this Policy. The name, title, and contact information (phone number, email address, and office address) for each Coordinator shall be made available to the TCC community, including:

- Applicants for admission and employment
- Students
- Employees

¹ Each institution has its own formal governance structure and independent board. As a consortium, the Institutions work together to resolve concerns that cross the boundaries of individual Institutions.

- Union and/or professional organizations holding collective bargaining or professional agreements with the campus

Reporting Misconduct. Any person may report sex discrimination, including sexual harassment. The reporting party need not be the purported victim of the sexual harassment and/or sex discrimination.

Anyone wishing to report sex discrimination may do so utilizing the contact information of the Title IX Coordinator for their individual Institution. These reports shall be accepted when received in-person, via mail, electronic mail, telephone, and/or by any other means clearly defined by TCC. Individuals can report potential sex discrimination and/or sexual harassment verbally or in writing.

Publication. This Policy shall be distributed and made available to all members of the TCC community. The Policy, and contact information for each Title IX Coordinator, shall be present on each Institution's website. Every handbook and/or catalog made available to members of the Institution's community shall contain a link to this policy and the Title IX Coordinator's contact information.

II. Relevant Terms

Advisor: An Advisor is one individual who provides guidance to the student or employee throughout the complaint process, as set forth in this Policy. Parties are entitled to an Advisor through every stage of the complaint process.

The Advisor is responsible for questioning witnesses and other parties during the hearing. Other than this responsibility, the Advisor's role is limited. See Section IX.C.7 for a full overview of the Advisor's role. Outside the role of questioning during a hearing, an Advisor may never speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. TCC reserves the right to exclude an Advisor who does not abide by these procedures.

Complainant: An individual alleged to be the victim of conduct that could constitute sexual harassment. For purposes of this Policy, a Complainant must be participating in, or attempting to participate in, an education program or activity of TCC. An individual who is on leave from their TCC employment or TCC student status is considered to be a person attempting to participate in an education program or activity for purposes of this Policy.

Consent: Consent is affirmative, clear, knowing, voluntary, conscious, and revocable permission. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

- a) Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- b) Consent can be withdrawn at any time.

- c) Previous relationships or prior consent cannot imply consent to future sexual acts; this includes “blanket” consent (i.e., permission in advance for any/all actions at a later time/place).
- d) It is the obligation of the person initiating the sexual activity to obtain consent.
- e) An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or, who is coerced by a supervisory or disciplinary authority.
 - 1. Force: violence, compulsion, or constraint physically exerted by any means upon or against a person.
 - 2. Coercion: the application of pressure by the Respondent that unreasonably interferes with the Complainant’s ability to exercise free will. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.
- f) A person who does not want to engage in sexual activity is not required to resist or to verbally object.
- g) Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent (i.e., crying, pulling away, not actively participating, uncomfortable or upset facial expressions).
- h) Consent may not be given by an individual who has not reached the legal age of consent under applicable law.

In addition to being of legal age, an individual must have the capacity to give affirmative consent.

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are:

- Asleep;
- Unconscious;
- Unable to understand the fact, nature or extent of sexual activity due to the impact of drugs, alcohol or medication;
- Unable to communicate due to a mental or physical condition; or,
- Otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol or drugs. However, consumption of alcohol or other drugs alone is insufficient to establish incapacitation. In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s

level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking, or intimate partner violence, and does not diminish one's responsibility to obtain consent.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol or drugs impacts an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; or,
- Capacity to appreciate the nature and the quality of the act.

Finally, evaluating incapacitation also requires an assessment of whether a Respondent knew, or should have known, that the Complainant was incapacitated. This assessment is conducted using an objective reasonable person standard. A Respondent's lack of awareness of the Complainant's incapacity is no excuse if an objective, reasonable person would have been aware of Complainant's incapacity.

Education Program or Activity: Alleged sexual harassment is only covered under this Policy if the alleged conduct occurred within TCC's "education program or activity." For purposes of this Policy, "education program or activity" means locations, events, or circumstances over which TCC exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurred.

If the alleged conduct occurs off-campus, and does not occur within TCC's education program or activity, the conduct cannot be investigated and addressed under this Policy. If a complaint is accepted under this Policy, and over the course of the investigation or hearing, it is determined that the alleged conduct did not occur within TCC's education program or activity, the complaint process under this Policy will be terminated.

Under some limited circumstances, off-campus conduct may be covered under this Policy. For off-campus conduct to be covered under this Policy, one of the three following conditions must be met:

- The incident occurred as part of TCC's "operations";
- TCC exercised substantial control over the Respondent and the context of the alleged sexual harassment; or,
- The incident occurred at an off-campus building owned or controlled by an officially recognized TCC student organization.

Conduct that does not occur within TCC's education program or activity, as defined by this Policy, may still be addressed through other policies and processes, such as those under the Institution's Code of Conduct, Civil Rights Policy, and/or any other applicable policy adopted by an individual Institution.

Conduct that occurs outside of the United States, including conduct taking place within a TCC-sanctioned study abroad program, cannot be investigated under this Policy. However, conduct occurring outside of the United States may still be addressed through other policies and processes, such as those under the Institution's Code of Conduct, Civil Rights Policy, and/or any other applicable policy adopted by an individual Institution.

Formal Complaint: A document filed by a Complainant or Reporting Party, or a document signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting an investigation into the allegation. If the formal complaint is signed by the Title IX Coordinator, the Title IX Coordinator is not treated as a Complainant, nor is the Title IX Coordinator treated as a party to the complaint. At the time of filing the formal complaint, the Complainant must be participating in, or attempting to participate in, an education program or activity of TCC.

"A document filed by a Complainant or Reporting Party" means a document or electronic submission (such as by electronic mail or through an online reporting system) that contains the Complainant's or Reporting Party's physical or digital signature, or otherwise indicates who is the person filing the complaint. These reports shall be accepted when received in-person, via mail, electronic mail, telephone, and/or by any other means clearly defined by TCC. Individuals can report potential sex discrimination and/or sexual harassment verbally or in writing.

Reporting Party: An individual who makes a report of alleged/potential sexual harassment. This person does not need to be a Complainant and can be any person, including an individual unassociated with TCC. A Reporting Party is not considered a Complainant for purposes of this process.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. An individual does not have to be enrolled or employed by TCC to qualify as a Respondent under this Policy. TCC may dismiss a formal complaint if the Respondent is no longer enrolled or employed by TCC; however, the decision to dismiss will be made on an individual basis, with consultation between each involved Institution's Title IX Coordinators.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant and/or the Respondent. The range of supportive measures available is listed in Section V of this Policy.

Support Person: A Support Person is one individual who provides emotional support to a party throughout the complaint process, as set forth in this Policy. Parties are entitled to a Support Person through every stage of the complaint process.

The Support Person may never speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. TCC reserves the right to exclude a Support Person who does not abide by these procedures.

III. Sexual Harassment

Only allegations of Sexual Harassment, alleged to have occurred within TCC's education program or activity, are addressed under this Policy.² This section provides the definition of Sexual Harassment, for purposes of this Policy.

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- a) An employee conditioning the provision of an aid, benefit, or service of the Institution on an individual's participation in unwelcome sexual conduct (also known as *quid pro quo sexual harassment*).
 - Note: Complainant's statement that they found the conduct to be unwelcome is sufficient to constitute "unwelcome conduct."
- b) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TCC's education program or activity.
 - Note: "Unwelcome conduct" depends on a variety of factors and must be evaluated in light of the known circumstances.
 - Note: "Severe, pervasive, and objective" must be evaluated in light of the known circumstances, and is dependent on the facts in each situation. However, this element must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.
- c) Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
 - Note: A single instance of any conduct as defined below is sufficient to constitute sexual harassment. Any instance of any of the conduct defined below does not need to demonstrate severity, pervasiveness, objective offensiveness, or denial of equal access to education or employment, because denial of equal access is assumed.

Sexual Assault. As defined in the Clery Act (20 USC 1092(f)(6)(A)(v), Sexual Assault is: an offense that meets the definition of rape, fondling, incest, or statutory rape, as used in the FBI's Uniform Crime Reporting (UCR) Program. The relevant FBI UCR definitions are as follows:

Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where

² Behavior which does not fall under the definition of Sexual Harassment may be addressed through other policies and processes, such as those under the Institution's Code of Conduct, Civil Rights Policy, and/or any other applicable policy.

the Complainant is incapable of giving consent because of age or permanent mental incapacity.

Incest. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape. Sexual intercourse with a person who is under the statutory age of consent. In California, the statutory age of consent is 18.

Dating Violence. As defined in VAWA (34 USC 12291(a)(10), Dating Violence is: violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; 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 interactions between the persons involved in the relationship.

Domestic Violence. As defined in VAWA (34 USC 12291(a)(8), Domestic Violence is: acts that include felony or misdemeanor crimes of violence committed by one of the following:

- a current or former spouse or intimate partner of the Complainant;
- a person with whom the Complainant shares a child in common;
- a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California; or,
- Any other person whose acts an adult or youth Complainant is protected from under the domestic or family violence laws of the state of California.

Stalking. As defined in VAWA 34 USC 12291(a)(30), Stalking is: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or,
- Suffer substantial emotional distress.

IV. Behavior That Does Not Constitute “Sexual Harassment” Under This Policy

Behavior which does not fall under this Policy’s definition of Sexual Harassment may be addressed through other policies and processes, such as those under the Institution’s Code of Conduct, Civil Rights Policy, and/or any other applicable policy adopted by an individual Institution.

Each Institution maintains individual policies addressing sexual misconduct. These policies might address conduct constituting sexual misconduct and/or sexual harassment, as defined by those individual policies. Any conduct that constitutes Sexual Harassment, as defined by this Policy, is addressed using the process established in this Policy. Other conduct, as defined under other Institution policies, is addressed using the processes established in those individual policies.

V. Supportive Measures

Supportive measures, as defined in Section II, shall be made available to the Complainant and/or the Respondent before or after the filing of a formal complaint. Additionally, supportive measures shall be made available to a Complainant and/or a Respondent even if a formal complaint is not filed.

The Complainant’s Home Institution Title IX Coordinator shall implement appropriate supportive measures for the Complainant. If the supportive measures require involvement of the Respondent’s Home Institution, such measures will be coordinated through the TCC Title IX Administrator.

Supportive measures are designed to restore or preserve equal access to the TCC’s education program or activity without unreasonably burdening the other party. This includes measures designed to protect the safety of all parties or the Institution’s educational environment, or deter sexual harassment.

These measures may include, but are not limited to, the following:

- Counseling;
- Extensions of deadlines or other course-related adjustments, in coordination with the relevant Faculty member;
- Modifications of work or class schedules, in coordination with the relevant Faculty member and/or supervisor;
- Campus escort services;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas of campus; and,
- Other similar measures.

These supportive measures, provided to a Complainant or Respondent, shall remain confidential to the extent that maintaining such confidentiality will not impair the Institution's ability to provide the supportive measures.

The Complainant's Home Institution Title IX Coordinator shall, upon becoming aware of alleged sexual harassment and the identity of the alleged Complainant, promptly contact the Complainant to discuss the availability of supportive measures. In implementing any supportive measures, the Title IX Coordinator shall consider the Complainant's wishes.

VI. Emergency Removal

In certain circumstances, a Respondent's Home Institution may remove a Respondent from an education program or activity. Such removal will only occur on an emergency basis. An emergency removal is not equivalent to a determination of responsibility, nor is it a sanction for alleged behavior. The Institution can pursue an emergency removal of a student and/or employee Respondent before or after the filing of a formal complaint.

Emergency removals will occur only after the Institution determines there is an emergency situation. This determination occurs only after the Institution has completed the following steps:

- **Completion of an individualized safety and risk analysis.** This analysis will focus on the specific Respondent and the specific circumstances arising from the allegations of sexual harassment.³
- **Determination that the following three components are present:**
 - *An "immediate threat" justifying emergency removal.* This analysis should focus on the Respondent's propensity, opportunity, and/or ability to effectuate a stated or potential threat. This determination will be fact-specific.
 - *The threat is "to the physical health or safety of any student or other individual."* This may be the Complainant, the Respondent, or any other individual.
 - *And the threat "arises from the allegations of sexual harassment."* The emergency situation must specifically arise from the allegations of sexual harassment.
- **Evaluation of the applicability of disability laws to the removal decision.** TCC will fully and appropriately consider applicable disability laws before subjecting a Respondent to emergency removal.
- **Consideration of the appropriateness of supportive measures in lieu of an emergency removal.** Emergency removals should only occur when there are genuine and demonstrated emergency situations.

³ If a Respondent's behavior does not arise from the allegations of sexual harassment, the Institution may still address the behavior under other policies and processes, such as those under the Institution's Code of Conduct, Civil Rights Policy, and/or any other applicable policy adopted by an individual Institution.

- **Providing the Respondent with notice and an immediate opportunity to challenge the emergency removal.** TCC will provide the Respondent with a sufficiently detailed notice, notifying the Respondent of the identified emergency threat of physical safety or harm. The Respondent is not entitled to a full evidentiary hearing (as set forth in Section IX.C.) to challenge an Emergency Removal.

VII. Administrative Leave (Employees Only)

An Institution may place a non-student, employee Respondent on administrative leave during the pendency of the formal grievance process.

An employee can be placed on administrative leave only after a formal complaint has been filed against a Respondent and the grievance process has begun. Administrative leave is intended for non-emergency situations.

VIII. Alternative Resolution Process

TCC recognizes some parties may desire resolution of their matter through an Alternative Resolution Process, instead of through the Formal Grievance Process. Accordingly, parties can mutually agree to resolve a complaint through an Alternative Resolution process, instead of undergoing the Formal Grievance Process.

The decision to initiate an Alternative Resolution process must be consented to in writing by both parties. The Alternative Resolution process can be terminated at any time by either party, and a Formal Grievance Process initiated instead.

Alternative Resolution is not available for employee Respondents. Any allegation of sexual harassment against an employee must proceed under the Formal Grievance Process.

In the Alternative Resolution Process, a Resolution Facilitator oversees the process. This Resolution Facilitator does not serve in the role of fact finder but rather helps the parties identify potential resolution(s) to the complaint. If the parties agree to an Alternative Resolution, the Resolution Facilitator will normally request the Complainant to submit a written statement describing the circumstances and the requested Alternative Resolution within five (5) business days of the decision to proceed with Alternative Resolution. The Resolution Facilitator may share the Complainant's statement with the Respondent, who will then have five (5) business days to submit a written response to the Resolution Facilitator. The Resolution Facilitator may share the Respondent's submission with the Complainant.

If the parties can agree on a resolution, such resolution will be documented by the Resolution Facilitator with signatures by both parties accepting the terms of the Alternative Resolution.

If the parties are unable to reach an agreed-upon resolution through the Alternative Resolution Process, the Resolution Facilitator will refer the matter back to the TCC Title IX Administrator, who will then proceed with the Formal Resolution Process as described in this Policy.

The TCC Title IX Administrator will maintain records of all reports and conduct referred for Alternative Resolution. Alternative Resolution will typically be completed within thirty (30) business days of the

initial report. In circumstances when it is not possible to complete the process in this time frame, both parties will be notified in writing regarding the delay and the anticipated time frame for completion.

IX. Formal Grievance Process

The Formal Grievance Process is initiated when a Complainant or Reporting Party makes a report of alleged sexual harassment to their Institution's Title IX Office. Throughout the Formal Grievance Process, the Complainant's and Respondent's Home Institution Title IX Coordinator, as well as the TCC Title IX Administrator, will work closely and cooperatively together. They will maintain open communication during all phases of the Formal Grievance Process, including the investigation, hearing, and appeals stage.

TCC does not make determinations of responsibility prior to the completion of the Formal Grievance Process. All evidence gathered will be objectively evaluated. This includes both inculpatory and exculpatory evidence. Credibility determinations will not be made based solely on a person's status as a Complainant, Respondent, or witness. Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The burden of proof and the burden of gathering sufficient evidence to reach a determination regarding responsibility rests on TCC, and not on the parties.

A. General Information

1. Standard of Evidence

TCC will utilize a "Preponderance of the Evidence" standard in evaluating allegations of sexual harassment. "Preponderance of the evidence" means the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not a quantitative, standard.

2. Intake Process

As noted above, the Formal Grievance Process is initiated when a Complainant or Reporting Party makes a report of alleged sexual harassment (Formal Complaint) to their Institution's Title IX Office.

Upon receipt of such a Formal Complaint, the Complainant's Home Institution's Title IX Coordinator will engage in an Intake Process, in which they meet with the Complainant, gather preliminary information about the allegation(s), and write the information gathered in an Intake Report.

The Intake Process is not intended to serve as an exhaustive interview, but rather to provide TCC with sufficient contextual information to determine the appropriate next steps to support the Complainant and to guide TCC's Response.

Below is a summary of the topics the Complainant's Home Institution's Title IX Coordinator will address in the meeting with the Complainant:

- Assistance with care and support resources, medical providers, and law enforcement;

- Supportive Measures;
- Procedures for determining next steps and appropriate resolution process; and,
- Options for participating in an Alternative Resolution or Formal Grievance Process.

The Complainant's Home Institution Title IX Coordinator will send a copy of the Formal Complaint and Intake Report to the Respondent's Home Institution's Title IX Coordinator and the TCC Title IX Administrator.

Following receipt of the Formal Complaint and Intake Report, the Respondent's Home Institution Title IX Coordinator will review and evaluate the allegations. Based on this information, the Respondent's Home Institution Title IX Coordinator will determine if the complaint will proceed under this Policy, meaning the conduct would be considered Sexual Harassment if the allegation(s) is sustained. If Respondent's Home Institution Title IX Coordinator determines the complaint is not covered by this Policy, they will notify Complainant's Home Institution Title IX Coordinator.

In the event the Complainant's Home Institution Title IX Coordinator does not agree with the initial evaluation, the Complainant's Home Institution Title IX Coordinator may file a written appeal to the TCC Title IX Administrator. Upon receipt of a written appeal, the TCC Title IX Administrator will conduct an initial assessment of the complaint to determine whether the Formal Complaint will proceed under this Policy. The TCC Title IX Administrator's appeal determination is final.

If the Respondent's Home Institution Title IX Coordinator determines the Formal Complaint will proceed under this Title IX Policy, the TCC Title IX Office will initiate the Formal Grievance Process.⁴ A written complaint is not required for an allegation to constitute a report of misconduct. The TCC Title IX Administrator will determine whether an investigation is warranted based on a preliminary inquiry into the allegations set forth in the Formal Complaint.

When a Formal Complaint is filed, the TCC Title IX Administrator will notify the parties of their option to participate in the Alternative Resolution Process (see above). This option is not available for employee Respondents. Any allegation of sexual harassment against an employee must proceed under the Formal Grievance Process. If either party declines to participate in the Alternative Resolution Process, the TCC Title IX Administrator shall initiate the Formal Grievance Process, as set forth in this Section.

3. Notice of Allegations

Once an investigation has been initiated, the TCC Title IX Administrator will send a written notice to both parties which will include:

- The identities of the parties (if known);

⁴ If the conduct alleged would not meet the definition of Sexual Harassment, even if sustained, the Title IX process will be terminated. However, the conduct may continue to be investigated under other policies and processes, such as those under the Institution's Code of Conduct, Discrimination & Harassment Policy, Civil Rights Policy, and/or any other applicable policy adopted by the Institution.

- A summary of the alleged conduct, including the date(s), time(s), and location(s) of incident(s) (if known);
- Policy sections alleged to be violated by the conduct;
- The formal grievance process, including any available informal resolution processes;
- A statement that Respondent is presumed not responsible until a determination of responsibility is made following the investigation and hearing;
- A statement that the Institution will not make a determination of responsibility until the conclusion of the grievance process;
- A notice regarding whether interviews will be recorded, and that only the Investigator is permitted to record interviews;
- A description of the parties' opportunities to present, inspect, and review evidence;
- A statement that the parties may have an Advisor of their choice, who is permitted to be an attorney;
- A summary of the hearing process and a statement that the Hearing Decision will make factual and policy findings regarding the allegations;
- A statement that findings will be based on a Preponderance of the Evidence Standard;
- A notice admonishing the parties against retaliation; and,
- A notice informing the parties they are prohibited from making false statements or knowingly submitting false information based on the Institution's Code of Conduct.

The Notice of Allegations shall be amended any time during the investigation to include additional allegations of Policy violations identified during the investigation. An amended Notice of Allegations should include all required information described above.

4. Timing

Absent an extension for good cause, an Investigator will typically complete their investigation within 60 – 75 business days from the Notice of Allegations. This includes the Evidence Review process. If the Investigator determines additional time is needed to complete the investigation, the Investigator will provide written notice to the parties of the delay and the good cause reason for the delay. Some cases may take longer to investigate, depending on the number of witnesses and/or the number of allegations.

Absent an extension for good cause, the hearing process will typically be completed, including issuance of the Hearing Decision, within 30 – 45 business days from the issuance of the Investigation Report. If the Adjudicator and/or the Coordinator determines additional time is needed to complete the hearing, the Coordinator will provide written notice to the parties of the delay and the good cause reason for the delay.

Absent an extension for good cause, the appeal process will typically be completed, including issuance of the final appeal decision, within 15 – 30 business days from the issuance of the Hearing Decision. If the Appeal Officer and/or the Coordinator determines additional time is needed to complete the appeal process, the Coordinator will provide written notice to the parties of the delay and the good cause reason for the delay.

In summary, absent extensions for good cause, the entire Formal Grievance Process should be completed within 180 business days from the issuance of the Notice of Allegations. Failure to complete the Formal Grievance Process within this time period does not, in and of itself, constitute a procedural error. Any such argument of procedural error (as set forth in Section IX.E.) must also include an explanation as to how the delays materially impacted the outcome of the Formal Grievance Process.

5. Concurrent Criminal Investigations

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a Formal Complaint submitted to TCC. A pending police investigation is a separate investigation and it does not relieve TCC of its responsibility to timely investigate complaints under this Policy. A temporary delay for the length of the fact-finding portion of a criminal investigation may constitute good cause for extending the timeline of the Institution's investigation.

6. Confidentiality

Parties may share confidential information received through the process with their Support Person and Advisor. TCC shall not restrict the ability of the parties to discuss the allegations under investigation for the purpose of gathering and presenting relevant evidence.

Institution representatives are permitted to share confidential information among other Institution representatives who have a reasonable need to know. TCC will endeavor to respect any requests for confidentiality, but will also weigh those requests against the Institution's responsibility to maintain a safe environment for the Institutional community. Complete confidentiality cannot be guaranteed.

7. Right to an Advisor

Parties may elect to be accompanied by an Advisor during meetings and proceedings related to the investigation and hearing process outlined in this Policy. Parties are limited to one Advisor. An Advisor can be anyone, including an attorney. The Advisor may not speak on behalf of the party or otherwise disrupt any interviews or proceedings.

Specific guidelines regarding the Advisor role at the hearing are outlined below. TCC reserves the right to exclude or remove an Advisor who does not comply with this Policy.

A party does not have to have an Advisor during the investigation process. TCC will not provide any party with an Advisor during the investigation process. However, as outlined below, TCC will provide a party with an Advisor during the hearing, if the party has not already obtained an Advisor.

8. Support Persons

Parties may elect to be accompanied by a Support Person during the hearing process. Parties are limited to one Support Person. A Support Person may not be a party or a witness in the case. The Support Person's role is to provide emotional support throughout the process. The Support Person may not speak on behalf of the party or otherwise disrupt any interviews or proceedings. TCC reserves the right to exclude or remove a Support Person who does not comply with these procedures.

9. Accepting Responsibility

A Respondent may accept responsibility for the conduct alleged at any time during the investigation or hearing process, and acknowledge the identified Policy violation(s). If a Respondent accepts responsibility for the violation(s), they may proceed to sanctioning rather than completing a hearing. In doing so, the Respondent waives any right to appeal the Policy determination of responsibility.

10. Closure

Not all reports of potential sexual harassment constitute a report of prohibited conduct that may be resolved through this Policy.

TCC must close and dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the Institute (including buildings or properties controlled by recognized student organizations; and/or
- The alleged conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in (an education program or activity of TCC.

Additionally, TCC may close and dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing::

- A Complainant notifies their Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- It is determined that the Respondent is no longer enrolled or employed by TCC;
- Specific circumstances prevent TCC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.,

A decision to close a matter based on any of the above-listed factors is made at the discretion of the TCC Title IX Administrator.

Upon termination of the process, the TCC Title IX Administrator will provide written notice to the parties describing the reason for the dismissal. TCC may continue to investigate the allegations as a potential violation of another policy. If TCC elects to continue the investigation outside of the TCC Title IX Policy, the TCC Title IX Administrator shall provide written notice to the parties describing the determination.

The dismissal determination is appealable by any party under the procedures for appeal outlined in Section IX.E., below. The decision not to dismiss is also appealable by any party claiming a dismissal is required or appropriate.

A complainant who decides to withdraw a complaint may later request to reinstate or refile the complaint.

11. Consolidation of Formal Complaints

TCC may consolidate Formal Complaints under two circumstances:

- Where there is a complaint involving more than one Complainant and/or Respondent, stemming from the same facts or circumstances; or,
- Where a cross-complaint has been filed by a Respondent against a Complainant.

A decision to consolidate matters based on any of the above-listed factors is made at the discretion of the TCC Title IX Administrator. If the TCC Title IX Administrator determines consolidation is appropriate, they must send notice to all involved parties.

B. Investigation Process

1. Designation of the Investigator

The TCC Title IX Administrator will designate an Investigator to conduct a fair, thorough, and impartial investigation.

The Investigator will have had appropriate training in the definitions of sexual harassment, the scope of TCC's education programs and activities, the investigation and hearing processes, the informal resolution processes, and investigative report writing.

2. Investigation Process

Both parties will be provided equal opportunity to meet with the Investigator, submit evidence, and identify relevant witnesses. The Investigator will meet separately with the Complainant, Respondent, and witnesses. The Investigator has discretion regarding which witnesses to interview and when to conduct follow-up interviews with parties and witnesses.

The Investigator will prepare a written summary of each interview and send same to the witness or party for a review of accuracy. Unless the individual requests additional time, the written summary will be deemed accurate if the individual does not provide feedback on the written summary within two (2) business days of the Investigator emailing it to the individual.

The Investigator will take reasonable steps to gather relevant available evidence. The Investigator may exclude evidence they determine to be irrelevant or immaterial. The Investigator will not consider evidence which requires seeking information protected by a legally recognized privilege, unless the person holding the privilege has waived the privilege.

TCC shall not restrict the ability of the parties to discuss the allegations under investigation for the purpose of gathering and presenting relevant evidence.

The Investigator may gather information related to prior or subsequent conduct of the Respondent in determining pattern, knowledge, intent, motive, or absence of mistake.

The Investigator will generally not gather information related to the sexual history of either the Complainant or Respondent. The Investigator will not gather sexual history as it pertains to a party's reputation or character. However, the Investigator may gather sexual history when:

- The sexual history pertains to prior sexual conduct between the parties, and is therefore relevant to an analysis of whether Respondent reasonably believed Complainant consented to the alleged conduct.
- The sexual history is relevant to explain an injury.
- The sexual history is relevant to show another person is, or may be, responsible for the alleged conduct.
- The sexual history is relevant to show a pattern of behavior by Respondent.

Prior to any meeting, including an investigative interview meeting with a party, the Investigator shall provide the party with written notice of the date, time, location, participants, and purpose of the meeting. The Investigator shall provide the written notice with sufficient time for the party to prepare for the meeting. An Advisor and a Support Person may accompany a party to every meeting.

3. Recording

TCC may elect to electronically record investigative interviews. If they choose to do so, the Investigator will inform the parties and witnesses of this intent. TCC will retain any recordings it has made as the only authorized recording of the interviews. A recorded party may request to review the transcript or audio of their interview in-person and under supervision by a TCC representative. A party may request to review the transcript of the other party in-person and under supervision by a TCC representative.

Investigation recordings will be maintained for seven (7) years after the conclusion of the Formal Grievance Process, the Respondent's graduation, separation from TCC, or separation from Institutional employment, whichever is latest.

4. Evidence Review

Before issuing the final Investigation Report, the TCC Title IX Administrator will provide a preliminary Investigation Report⁵ to the parties, and provide the parties with an equal opportunity to respond to the relevant evidence, including allowing parties to present additional relevant evidence or information. This is known as the Evidence Review Process. This opportunity should be provided to each party regardless of whether the party participated in the investigation. Absent good cause, parties are provided with ten (10) business days to review and respond to the evidence.

The TCC Title IX Administrator will have discretion to determine how to provide access to the preliminary Investigation Report to the parties, based on the particular circumstances of the case and any party or witness privacy concerns. Neither Complainant, Respondent, nor anyone on either party's behalf may copy, remove, photograph, print, record, or in any other manner duplicate the information contained in the preliminary Investigation Report (unless a party is describing the material in a written response to the evidence).

As part of this Evidence Review Process, the parties may submit proposed questions for the Investigator to ask of the other party or any witness, request additional interviews and information-gathering, and/or suggest additional witnesses. The Investigator has discretion to determine if the responses warrant additional information-gathering. If the Investigator determines it is unnecessary to ask individuals additional questions, interview new witnesses, and/or gather additional evidence, the Investigator will explain their decision in the final Investigation Report.

If additional evidence is provided, the parties submit a written response to the evidence, or new evidence is gathered, it will be included in either a revised preliminary Investigation Report or a separate addendum, as deemed appropriate by the Investigator. Both parties will be provided a reasonable opportunity to review and respond to any new evidence. The Investigator will determine when it is appropriate to conclude the evidence review process. The TCC Title IX Administrator will notify the parties when the Evidence Review Process is complete and the Investigation Report is finalized.

5. Final Investigation Report

At the conclusion of the Evidence Review Process, the Investigator will prepare a final written report that includes:

- The identities of the parties;
- The identities of the witnesses;
- The dates of conducted interviews;
- A summary of the allegations;
- The policy alleged to be violated by the conduct;

⁵ Before issuing the preliminary Investigation Report, the Complainant's and Respondent's Home Institution's Title IX Coordinators, as well as the TCC Title IX Administrator, will review the draft preliminary Investigation Report for approval. The purpose of this review is to ensure the preliminary Investigation Report is impartial and reliable.

- A summary of the investigation process;
- The relevant statements of the parties and witnesses;
- A summary of the relevant evidence considered by the Investigator;
- A description of the relevant, material undisputed facts;
- A description of the relevant, material disputed facts;
- A statement describing how and when the parties were given the opportunity to review the evidence; and,
- Explanations for why evidence or witnesses submitted by the parties were not considered.

The report will not include findings of fact, findings of policy, or credibility determinations for parties or witnesses (other than to note when credibility is not disputed).⁶

The TCC Title IX Administrator will provide the parties with a final copy of the Investigation Report, including all attachments, at least 10 days prior to a hearing. The parties may submit a written response to the final Investigation Report. Written responses are incorporated into the materials that can be reviewed and considered by the Adjudicator.

C. Hearing

If the TCC Title IX Administrator determines, after the final Investigation Report is issued, that closure of the matter under this policy is not warranted, the matter shall proceed to a hearing. A hearing will be held in which an Adjudicator will make findings of fact on disputed facts, and findings of policy on the relevant Policy the Respondent is alleged to have violated.

Individuals may choose not to participate in the hearing. If any individual – Complainant, Respondent, and/or witnesses – chooses not to participate in the hearing, the Adjudicator may not consider any statement made by the individual to the Investigator. Parties (Complainants and Respondents) may also choose to attend the hearing and not answer questions.

The hearing is a closed proceeding and will not be open to the public. The witnesses will only be present in the hearing for the duration of their testimony.

TCC expects the parties will wish TCC to share documentation related to the allegations with their Support Person and/or Advisor. TCC provides a FERPA release form that authorizes such sharing and participation. The parties must complete this form before TCC is able to share records with a Support Person and/or Advisor. Parties must also complete this form before the commencement of the hearing. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Support Persons and/or Advisors are expected to maintain the privacy of the records shared with them by TCC. These records

⁶ As with the preliminary report, before issuing the final Investigation Report, the Complainant's and Respondent's Home Institution's Title IX Coordinators, as well as the TCC Title IX Administrator, will review the draft final Investigation Report for approval.

may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by TCC. TCC may seek to restrict the role of any Support Person and/or Advisor who does not respect the sensitive nature of the process or who fails to abide by TCC's privacy expectations.

1. Hearing Coordinator

The TCC Title IX Administrator will be responsible for designating a Hearing Coordinator who will coordinate the hearing process. The Hearing Coordinator will ensure the Adjudicator is provided with all necessary materials, including the Investigation Report and attachments, as well as any party's written responses to the final Investigation Report. The Hearing Coordinator will also arrange a location for the hearing and coordinate a date and time for the hearing.

The Hearing Coordinator will act as a liaison between the parties and the Adjudicator on all procedural matters.

2. Designation of Adjudicator

The TCC Title IX Administrator will be responsible for designating an Adjudicator, distinct from the Hearing Coordinator and any Title IX Coordinator, who will preside over the hearing and draft the Hearing Decision. The Adjudicator is a single individual, either internal or external to TCC. The Adjudicator is responsible for overseeing the hearing, making procedural determinations, managing the questioning process, and issuing the Hearing Decision.

The Adjudicator will have had appropriate training in the definitions of sexual harassment, the scope of TCC's education programs and activities, the investigation and hearing processes, the informal resolution processes, and hearing decision writing.

Additionally, the Adjudicator will be trained on the following:

- any technology to be used at the hearing;
- issues of relevance and evidence; and,
- when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

The Hearing Coordinator will provide the parties with written notice of the Adjudicator's identity.

After the Hearing Notice has been sent, parties will have five (5) business days to object to the selection of the Adjudicator for an actual conflict of interest or bias. An *actual conflict of interest* exists if the Adjudicator has a close personal relationship with one of the parties or witnesses. Prior work for TCC, prior work on Title IX-related matters, and any prior decisions regarding similar matters do not constitute bias on their own. The Adjudicator's sex, gender identity, race, ethnicity, religion, sexual orientation, or other identifying characteristic do not constitute a reason for bias on their own. The TCC Title IX Administrator will consider and resolve any objections to the selection of an Adjudicator.

3. Witnesses

The Adjudicator has ultimate discretion to call witnesses and may determine not to call witnesses submitted by the parties, and to call witnesses who were not submitted by the parties. The Adjudicator will communicate to the Hearing Coordinator the witnesses they have determined should be called for the hearing, what their expected relevant testimony will be, and their explanations for determining not to call witnesses submitted by the parties if they make such determinations.

The Hearing Coordinator will request the attendance of all the witnesses whose testimony the Adjudicator determined was within the hearing scope. The Hearing Coordinator will coordinate to have the Investigator present at the hearing for questions regarding the investigation and the Investigation Report.

TCC cannot compel parties or witnesses (with the exception of the Investigator) to testify in the hearing. Any witnesses' decision not to participate will not be a reason to cancel or postpone a hearing. Investigators who are current employees of TCC are expected to participate in the hearing, if requested. Non-employee investigators, including investigators who have left employment with TCC, can be requested, but cannot be compelled, to participate in the hearing.

The Complainant's and Respondent's Home Institution's Title IX Coordinators can be present in a silent role during the entirety of the hearing.

4. Hearing Notice

At least five (5) business days prior to the scheduled hearing, the Hearing Coordinator shall send the parties written notice of the hearing. The written notice will include the following information:

- The time, date, and location of the hearing, including if the hearing will be conducted entirely via videoconference;
- The identity of all parties participating in the hearing, including witnesses approved by the Adjudicator;
- A list of all documents the Adjudicator may consider in reaching their determination;
- TCC's Live Hearing Expectations; and,
- A general overview of the hearing process.

5. Recording

The Hearing Coordinator is responsible for ensuring the hearing is audio recorded. TCC shall retain the recording as the only authorized recording of the hearing. A recorded party may request to review the transcript or audio of the hearing in-person and under supervision by a TCC representative.

Hearing recordings will be maintained for seven (7) years after the conclusion of the Formal Grievance Process, the Respondent's graduation, separation from TCC, or separation from Institutional employment, whichever is latest.

6. Separation of Parties

Parties will be physically separated during the hearing, unless both parties request that they occupy the same physical space during the entirety of the hearing.⁷ The parties shall be able to see and hear any party providing testimony during the hearing; however, they shall not occupy the same physical space.

If the hearing is conducted in-person, each party shall provide their testimony while residing in the same physical location as the Adjudicator. When the party has finished providing their testimony, they will move to another location to observe the hearing via videoconference.

7. Hearing Questioning and Role of the Advisor

The Adjudicator will determine the order of questioning at the hearing. The Adjudicator may change the order of questioning, with appropriate verbal notice to the parties, if the Adjudicator determines a change is necessary to accommodate a witness' schedule, or for other procedural reasons. The Adjudicator may ask questions at any time of any party providing testimony during the hearing.

The Adjudicator will permit a party's Advisor to pose questions for the other party(ies) and witnesses. Questions must be relevant to the hearing scope, not be repetitive of information already gathered, and/or not be harassing of any party. The Adjudicator will evaluate each question asked. If the Adjudicator determines the question should not be asked, the Adjudicator will direct the party/witness not to answer the question and state their reasoning on the record. All determinations made by the Adjudicator are final, including determinations on questioning.

Parties are expected to notify the Hearing Coordinator of the identity of their Advisor and Support Person. The Hearing Coordinator will share this information with the other party.

If a party does not have an Advisor at the commencement of the hearing, TCC will provide the party with an Advisor, for the purpose of assisting the party with questioning during the hearing. If parties know they will not have their own Advisor at the hearing, they are encouraged to notify the Hearing Coordinator of this fact as soon as possible. TCC will provide an Advisor trained in the hearing process and in the development and posing of relevant questions. Parties are never permitted to ask questions of the other party(ies) and witnesses. If a party attends the hearing without an Advisor, TCC will provide that party with an Advisor. The party must utilize the provided Advisor for purposes of questioning during the hearing.

If a party does not participate in, or attend, the hearing, their Advisor may still appear at the hearing and ask questions of the other party(ies) and witnesses.

Absent their role in questioning, Advisors will remain silent during the hearing. They may not answer questions on behalf of any party, nor may they make closing statements on behalf of any party.

All participants at the hearing will behave in a respectful manner. The Adjudicator has discretion to remove any participant or observer who is not conducting themselves in a manner conducive to a fair, safe, and orderly hearing.

⁷ The Adjudicator is responsible for making a final decision about location of the parties during the hearing.

8. Party Mitigation and Impact Statements

Within five (5) business days after the last day of the hearing, the parties may provide to the TCC Title IX Administrator written statements related to potential sanctions. Specifically, parties may submit a written impact and/or mitigation statement.

If the Adjudicator determines there was a violation of policy, the Adjudicator will notify the TCC Title IX Administrator before issuing their Hearing Decision. The TCC Title IX Administrator will provide the Adjudicator with copies of the party statements, in accordance with Section IX.D, below. If the Adjudicator determines there was not a violation of policy, the TCC Title IX Administrator will not release the party statements to the Adjudicator.

9. Hearing Decision

The Adjudicator will consider the investigation record, including the Investigation Report and attachments, and the evidence accepted at the hearing in drafting their Hearing Decision. The Adjudicator will use a preponderance of the evidence standard to determine whether a Policy violation occurred. The Adjudicator will make their own findings and credibility determinations based on a preponderance of the evidence.

If a party or witness does not submit to questioning from the Adjudicator, or the party's Advisors, the Adjudicator may not rely on any statement of that party or witness in reaching their determination. The Adjudicator will not draw an inference regarding a person's decision not to participate in the hearing, nor will they draw an inference regarding a person's decision not to answer questions posed during the hearing. However, the Adjudicator may consider a person's selective participation during the hearing in assessing credibility. Selective participation, for purposes of this Policy, means a party chooses to answer some questions and declines to answer others.

If the Adjudicator finds a violation of policy, the Adjudicator and TCC shall follow the procedures set forth in Section IX.D. – Sanctioning.

If the Adjudicator does not find a violation of policy, the Adjudicator will finalize the Hearing Decision and submit the Hearing Decision to the TCC Title IX Administrator. The Hearing Decision will include the following:

- The allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from receipt of the Formal Complaint through the determination;
- Findings of fact;
- Policy findings (including any violations of other applicable policies, provided the parties were previously provided notice of the inclusion of those other policies);
- Rationale for each finding;
- Sanctioning determination; and,

- Rationale for the sanctioning determination.

Within fifteen (15) business days of the hearing, the TCC Title IX Administrator will send written notice to both parties of the Adjudicator's Policy and sanctioning determinations. The TCC Title IX Administrator will include a copy of the Adjudicator's decision.

The TCC Title IX Administrator will explain the Appeal Process in their written notice to the parties. The Adjudicator's determination becomes final on the date on which an appeal would no longer be considered timely (see Section IX.E).

For potential enhancements to sanctions, occurring when a Respondent has instances of prior conduct, please see Section IX.F.

D. Sanctioning

This section sets forth the procedures to be followed should the Adjudicator find that a Policy violation(s) occurred. This section applies only to instances involving student Respondents. In the case of employee Respondents, the TCC Title IX Administrator will refer the matter, including the Hearing Decision, to the Institution's designated office.

In cases involving student Respondents, if the Adjudicator determines there was a Policy violation, the Adjudicator will notify the TCC Title IX Administrator. The TCC Title IX Administrator will take two steps:

- They will notify the Title IX Coordinator of each student's home Institution. The Title IX Coordinators may submit written recommendations related to sanctions. They will provide those recommendations to the TCC Title IX Administrator, who will transmit them to the Adjudicator; and,
- They will provide the Adjudicator with any written party statements, as set forth in Section IX.C.8., above. If the parties did not provide written statements in accordance with Section IX.C.8., above, they will not be provided an additional opportunity to submit a written statement to the Adjudicator.

The Adjudicator will make a sanctioning determination based on the factual and policy findings, written party statements, written Institution recommendations, and other factors relevant to sanctioning.

These factors include, but are not limited to:

Severity of the violation: Location of the touching, the extent of the touching, the duration of the conduct, whether the conduct was repeated, the number of Policy violations, abuse of power, use of intimidation, use of force, level of endangerment to the Complainant, level of injury to the Complainant, presence of a weapon, deliberate embarrassment, exploitation of level of intoxication, invasion of privacy via recording, photographing, viewing, and distributing.

Aggravation: Whether the Respondent used force, threat, violence, duress, or intentionally caused intoxication to engage in conduct without Complainant's consent.

Intent: Whether Respondent intended to cause harm; whether Respondent premeditated the conduct; whether Respondent pressured others to engage in the conduct or similar conduct; whether Respondent was pressured by others to engage in the conduct.

Retaliation: Whether Respondent complied with No Contact Orders and other interim measures in place during the investigation and hearing process; whether Respondent engaged in conduct meant to intimidate or harass participants for their participation in the investigation or hearing process; whether Respondent was forthcoming during the investigation and hearing process; whether Respondent engaged in any other conduct which would obstruct the investigation or hearing process, or impacted the fairness of the processes.

Impact: The impact of Respondent's conduct and presence on the Complainant's safety and participation in TCC's programs; the impact of Respondent's conduct on TCC's community; the impact of sanctions on Respondent's access to participation in TCC's programs.

Character: Whether Respondent has made efforts to prevent the conduct from occurring again; Respondent's contributions to the Institutional community.

Possible sanctions include, but are not limited to:

Warning: Written notice that the Respondent's behavior was in violation of TCC Policy and that future violations will result in more severe sanctions.

Restitution: Reimbursement by the Respondent(s) to the Institution, another Claremont College, TCC, the Complainant(s), or a member of TCC's community to cover the cost of property damage or other loss.

Fine: A monetary penalty assessed as appropriate to the violation.

Service Hours: A set number of work hours the Respondent must complete. The Title IX Coordinator will determine the nature of the work to be performed. Generally, service hours are conducted on campus.

Educational Program/Project: Programs and activities designed to help the Respondent become more aware of Institution policies and help the Respondent understand the inappropriateness of their behavior, including, but not limited to, participation in an educational program or completion of an online program.

Referral for Assessment: A referral for an assessment with an appropriately trained therapist who will recommend a process for treatment. Reinstatement is conditioned upon receiving proof of completion of the recommended treatment.

Loss of Privileges: Denial of specific privilege(s) for a defined period of time. Privileges include, but are not limited to, participation in extra-curricular activities and events such as social events, intercollegiate athletics, intramural programs, student organizations, and student government, as well as the privilege of living on campus, living in a specific residence hall, participation in commencement ceremonies, or having a vehicle on campus.

Restricted Access: Conditions which specifically dictate and limit the Respondent's presence on campus and/or participation in Institution-sponsored activities. The restrictions will be clearly defined and may include, but are not limited to, presence in certain buildings or locations on campus or a No Contact Order. In cases involving parties from different Claremont Colleges, restricted access may extend to exclusion from another Institution campus.

Removal of Offending Cause: Requirement to remove the item which was the subject of the complaint.

Relocation or Removal from Residence Halls: Requirement that the Respondent relocate to another residence hall, or off-campus, by a specified date.

Probation: Formal, written notice that the Respondent's behavior is in violation of Institution policies and an expectation that the Respondent exhibit good behavior for a defined period of time. Any violation during the probationary period will result in increased sanctioning and may result in suspension or expulsion from the Institution. Notice of Conduct Probation is sent to the Respondent's academic advisor as well as to the Respondent's parent(s)/guardian if the Respondent is a minor.

Employment Probation: Formal, written notice that the employee's conduct is in violation of Institution policies and an expectation that the employee exhibit good behavior for a defined period of time. Any further violations during the probationary period will result in increased sanctioning and may result in employment suspension without pay or termination of employment.

Suspension: Separation from the Institution for a defined period of time. During the suspension period the Respondent is not permitted on campus, is not permitted to participate in any Institution-sponsored or affiliated program or activity, and is not permitted to earn any credits towards the Respondent's degree. The terms of the suspension may include the designation of special conditions affecting eligibility for re-enrollment or special conditions to be in effect upon re-enrollment, including a term of Conduct Probation.

Suspension without Pay (staff and faculty): Separation of employment for a defined period of time without pay for the time of separation.

Employment Termination: Permanent separation of the employee from their position. If the Respondent is a student, they may be permanently separated from their student position. A staff or faculty member who is terminated from their employment is not permitted to participate in any Institution-sponsored or affiliated program or activity.

Expulsion: Permanent separation from the Institution. A Respondent who has been expelled is not permitted on campus and is not permitted to participate in any Institution-sponsored or affiliated program or activity.

E. Appeal

A Complainant or Respondent who is not satisfied with the policy findings and/or sanctions at the completion of the hearing process may submit an appeal to the TCC Title IX Administrator. The TCC Title

IX Administrator will identify an appropriate trained Appeal Authority to review and make a determination of the appeal(s).

When the Title IX Administrator identifies an Appeal Authority, they will provide written notice of the individual's identity to the parties.

Appeals must be submitted within five (5) business days of the Notice of the Hearing Decision to the TCC Title IX Administrator. The appeal must specify which grounds the appeal is based upon and include any arguments the party wishes to make in support of their appeal. Appeals are limited to ten (10) pages, including attachments.

1. Appeal Grounds

A party may appeal based on the established investigation, hearing record, and Hearing Decision under one of the following grounds:

Procedural Error: There was a procedural error(s) during the investigation or hearing process which materially affected the outcome of the process. The appealing party must describe in their appeal how the procedural error impacted the outcome.

Disproportionate Sanctions: The sanctions are disproportionate to the Adjudicator's findings.

Conflict of Interest: The Title IX Coordinator, Investigator(s), and/or Adjudicator had a conflict of interest or bias for or against any party that affected the outcome of the matter. The appealing party must describe in their appeal the alleged conflict of interest or bias held by the individual and how this altered or impacted the outcome.

New Evidence: There is new evidence which was not available or known (and could not have reasonably been known) at the time of the final Hearing Decision which materially affected the outcome of the process. The appealing party must describe in their appeal how the new evidence would have altered the outcome of the process and why the new evidence was not available or reasonably known prior to the appeal.

2. Appeal Authority

As noted above, the TCC Title IX Administrator will designate an appropriate Appeal Authority to conduct a prompt, thorough, and impartial review of the appeal. The Appeal Authority will not be the same person as the Adjudicator, Investigator, or Title IX Coordinator.

The Appeal Authority will have had appropriate training in the definitions of sexual harassment and sexual misconduct, the scope of TCC's education programs and activities, the investigation and hearing processes, the informal resolution processes, and appeal decision writing.

3. Accepting an Appeal

The Appeal Authority will determine if the party has provided sufficient support for the grounds of their appeal. If the Appeal Authority finds the appeal is insufficient or does not state any of the proper grounds for appeal, they will send written notice to the appealing party and give them the opportunity

to amend their appeal to cure the defects. The Appeal Authority will provide a new deadline for submitting the appeal.

4. Appeal Response

The TCC Title IX Administrator will send a written notice of the appeal to the non-appealing party and provide them with a copy of the appeal. The non-appealing party may issue a response to the appeal. The appeal response is limited to ten (10) pages, including attachments, and may address only the issues raised in the appeal. The non-appealing party will have five (5) business days to submit their appeal response after receiving the notice of the appeal.

5. Appeal Record

The review of an appeal will not involve any additional investigation by the Appeal Authority. The review will be based upon evidence introduced during the investigation process and presented at the hearing, as well as the arguments made during the appeal process. The Appeal Authority will not consider new evidence for the purposes of upholding, overturning, or modifying the findings. Appeals submitted under the ground of new evidence will be considered only to determine whether the new evidence could likely change the findings.

6. Appeal Decision

The Appeal Authority will draft a written report which summarizes their decision regarding the appeal. The Appeal Decision will include a description of the ground(s) for the appeal, a summary of the issues raised on appeal, a statement regarding the evidence considered, a statement describing the decision was made based on the preponderance of the evidence standard, and the determination regarding the appeal.

The Appeal Authority may decide the following:

- Uphold the findings and sanctions;
- Overturn the findings and/or sanctions;
- Modify the findings and/or sanctions; or,
- Remand the case for a second hearing based on new evidence which could likely affect the outcome of the matter.

7. Notice of the Appeal Decision

The TCC Title IX Administrator will send written notice of the Appeal Decision to both parties within thirty (30) business days of the issuance of the Hearing Decision. The Notice of the Appeal Decision will include a copy of the written Appeal Decision. The notice will inform the parties there is no further review of the matter, no further right to appeal, and the matter is closed.

The determination regarding responsibility and sanctioning becomes final on the date of the Appeal Decision, unless the Appeal Decision determines another hearing is necessary based on new evidence discovered.

F. Final Sanctioning Determination

After the issuance of the final decision (the Hearing Decision if there is no appeal, or the Appeal Decision), the TCC Title IX Administrator will send matters involving findings of Policy violation to the Dean of Students in the Respondent's Home Institution. The Dean of Students will review the issued sanctions and determine if any enhancements are warranted based on a Respondent's disciplinary history. Enhancements based on a prior disciplinary history are not shared with the other party.

X. Training And Recordkeeping

TCC and the relevant Institutions (as defined in Section I., above) will retain documents related to this process for a period of seven (7) years. Documents related to this process include: Formal Complaints, remedies provided to the Complainant, the Investigation Report and attachments, the Hearing Decision, any sanctioning determination, and all appeal-related documents, as well as any audio recording or transcript of the hearing.

TCC will also retain, for a period of seven (7) years, all materials used to train Coordinators, Investigators, decision-makers, and any person facilitating the informal resolution or appeal process. TCC shall make this training material publicly available on its website.

There are multiple individuals involved in the Formal Grievance Process – the Title IX Coordinators, the Title IX Administrator and staff, Investigator, Adjudicator, facilitator of the Alternative Resolution Process, and Appeal Officers. No individual involved in the grievance process may have a conflict of interest or bias for or against any party, nor may they have a bias for or against Complainants or Respondents in general. All individuals involved in the grievance process shall receive yearly training on the grievance process. This training shall include:

- The definition of sexual harassment, per this Policy;
- Scope of the Institution's education program or activity; and,
- How to conduct an investigation and grievance process under this Policy.

XI. Retaliation

TCC prohibits retaliation against any person exercising their rights under this Policy. Retaliation is an adverse action against a person based on their report or other disclosure of alleged sexual harassment to an Institution employee or their participation in the investigation, reporting, or disciplinary processes provided for in this Policy. An adverse action is conduct that would discourage a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy, such as threats, intimidation, harassment and coercion. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

XII. Effective Date

This Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

INTERIM POLICY 8.18.20