

	Personnel Policies and Procedures Manual	Introduction: Section 1.04
		Adoption Date: 07-31-2019 Effective Date: 09-02-2019
Policy: Sexual Misconduct/Title IX		Applicability: All Employees
Reference(s):		

I. Policy Statement

Diné College is committed to providing an environment that is free of sexual misconduct. This policy applies to all faculty, staff, students and third parties, regardless of sexual orientation or gender identity. Sexual misconduct represents a serious threat to the well-being of all individuals on Diné College campuses or centers and will not be tolerated. Diné College requires all employees, students and third parties to report suspected violations of this policy whether or not the alleged conduct occurred on or off campus. The College will not tolerate sexual harassment, violence, assault, or retaliation as defined below and is committed to preventing it or stopping it whenever it may occur at the College or in its programs. Changes to the applicable law shall supersede this policy.

1. Title IX Statement

It is the policy of Diné College to comply with Title IX of the Education Amendments of 1972 which prohibits discrimination based on sex in Diné College’s educational programs and activities. Title IX also prohibits retaliation for asserting or otherwise participating in claims of sex discrimination.

2. Violence Against Women Act (VAWA) Statement

It is the policy of Diné College to comply with the federal Violence Against Women Act amendments to the Clery Act and the corresponding regulations. VAWA imposes additional duties on colleges to investigate and respond to reports of sexual assault, stalking, and dating and domestic violence, and to publish policies and procedures related to the way these reports are handled.

3. Prohibited Sexual Misconduct

A. Sexual Harassment

Conduct on the basis of sex that constitutes one or more of the following activities:

- i. Unwelcome conduct determined by a reasonable person to so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a College program or activity. Conduct that may, under certain circumstances, meet this standard could include depending on the circumstances, but is not limited to
 - Unwelcome sexual innuendo, propositions, sexual attention, or suggestive comments and gestures.
 - Unwelcome physical contact of a sexual nature, such as touching, hugging, kissing, patting, or pinching, that is uninvited and unwanted or unwelcome by the other person. Humor and jokes about sex or gender-specific traits; sexual slurs or derogatory language directed at another person’s sexuality or gender. Insults and threats based on sex or gender; and other oral, written, or electronic communications of a sexual nature that a person communicates and that are unwelcome.
 - Written graffiti or the display or distribution of sexually explicit drawings,

pictures, or written materials; sexually charged name-calling; sexual rumors or ratings of sexual activity/performance; the circulation, display, or creation of e-mails or Web sites of a sexual nature. (For more information on misconduct using the College's computing facilities, please see the Information Technology Policies Manual.)

- Non-academic display or circulation of written materials or pictures degrading to a person(s) or gender group.
 - Unwelcome attention, such as repeated inappropriate flirting, inappropriate or repetitive compliments about clothing or physical attributes, staring, or making sexually oriented gestures.
 - Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping.
- ii. *Quid Pro Quo* Harassment: A College associate conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct. Examples of *quid pro quo* sexual harassment include:
- Offering employment or educational benefits in exchange for sexual favors.
 - Threatening or taking negative action in the event of having sexual advances denied and/or after having sexual advances denied, such as a professor threatening to fail a student unless the student agrees to date the professor
 - Sexual assault: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. This includes:
 - Rape: The penetration, no matter how slight, of a person's vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - Fondling: Touching the private body parts of another person for the purpose of sexual gratification, without that person's consent, for the purpose of sexual gratification.
 - 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 legal age of consent.
- iii. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: 1) The length of the relationship; 2) The type of relationship; and 3) The frequency of interaction between the persons involved in the relationship.
- iv. Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a person, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence

laws of the jurisdiction.

v. Stalking: 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.

B. Sex discrimination and/or gender discrimination: Treating an individual unfavorably or adversely based upon that individual's sex and/or gender in the context of educational or employment activities, programs, or benefits, such as in admissions, hiring, selection for and/or participation in projects, teams, or events, provision of wages or benefits, selection for promotions, etc.

C. Sexual Exploitation

Sexual exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent.

Examples of behavior that could rise to the level of sexual exploitation include:

- i. Prostituting another person;
- ii. Recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
- iii. Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
- iv. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

D. Retaliation

Retaliation prohibited under this Policy includes threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for violation of this Policy or any part of the Student Code of Conduct that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this policy constitutes retaliation.

The exercise of any rights protected under the First Amendment does not constitute retaliation. Charging an individual with a violation of this policy or a Code of Conduct violation for making a materially false statement in bad faith in the course of a proceeding under this policy does not constitute retaliation. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

II. Definitions

1. Consent

In order to give effective consent, a person must be of legal age. Consent means a voluntary and informed agreement to engage in sexual activity. Consent can be withdrawn at any time. The following list details situations where consent is invalid. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity.

- A. A person who is incapacitated, unconscious, or asleep cannot give valid consent. A person with an intellectual disability may not be able to give valid consent.
- B. Valid past consent does not imply future consent. In other words, each instance of sexual activity is looked at separately to determine if there was consent by all parties.
- C. Silence or failure to resist does not imply consent.

2. Force

Additionally, the use of force or threats to obtain consent renders the consent invalid. The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact, and is prohibited. Force may include words, conduct, or appearance. Force includes causing another's intoxication or impairment through the use of drugs or alcohol. Under this policy force includes the use of any of the following:

- A. Physical Force
- B. Coercion – is to force one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, or emotional intimidation.
- C. Intimidation, Implied Threats and/or Threats

3. Incapacitation

Incapacitation is the inability, temporarily or permanently, to give consent, because the person is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the person is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. Some signs of incapacitation may include, but are not limited to, lack of control over physical movements (e.g., stumbling, falling down), lack of awareness of circumstances or surroundings, the inability to speak or communicate orally, or the inability to communicate for any reason.

III. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services the College offers victims and the accused as appropriate, as reasonably available, and without fee or charge before or after the filing of a Formal complaint or where no formal complaint has been filed. Such measures are designed to provide equal access to the College's education program or activity without causing an unreasonable burden, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, 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 the campus, and other similar measures. The College will maintain as confidential any supportive measures provided to the victim or accused, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

1. Title IX Coordinator(s)

Diné College's Title IX Coordinators are:

Glennita Haskey, Vice President of Student Affairs
Office: Student Success Building, Tsaile Campus
Email: ghaskey@dinecollege.edu
Phone: (928) 724-6860

And

Dr. Perphelia Fowler, Director of HR
Office: 230A NHC Building – Tsaile Campus
Email: pfowler@dinecollege.edu
Phone: (928) 724-6603

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for these Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

The Title IX Coordinators are responsible for coordinating the College's prevention of and response to sexual harassment and sexual violence, as well as for addressing any questions or inquiries regarding how the College applies federal Title IX law and regulations. The Title IX Coordinators have many responsibilities as part of their job of ensuring the College complies with the law. The Title IX Coordinator has the primary responsibility for:

- A. Receiving reports and Formal Complaints regarding sexual misconduct;
 - B. Signing a Formal Complaint where the victim is unwilling or unable to do so in cases where a formal complaint is necessary to ensure equal access to the College's program and activities;
 - C. Providing information to students about resources and support services available;
 - D. Designation of an Investigator
 - E. Issuing supportive measures;
 - F. Carrying out restorative remedies to Complainants when directed to do so upon conclusion of a hearing;
 - G. Overseeing the processes in this Policy in a neutral and impartial fashion;
2. Investigator

The Investigator is ordinarily a member of the College's Department of Human Resources specifically trained in sexual misconduct investigations to conduct a prompt, thorough, and fair investigation of any sexual misconduct complaint against a College faculty or staff member, affiliate, or a non-affiliate.

3. Confidentiality

Examples of individuals who can offer confidentiality:

- A. Medical providers

- B. Lawyers providing legal advice
- C. Licensed mental health counselors, psychologists, and social workers
- D. Pastoral counselors (e.g., priests and other clergy members)
- E. Local rape crisis centers and other confidential community resources

As noted above, when a victim speaks to an off-campus individual offering confidentiality, the College may be unable to conduct an investigation into the particular incident or pursue disciplinary action against the accused. In those circumstances, confidential counselors and advocates will still assist the victim in receiving other necessary protections and support, such as victim advocacy services, academic support or campus accommodations, disability services, health or mental health services, and changes to living, working, or course schedules (*i.e.*, “supportive measures”).

At any time, a victim who initially requests confidentiality may also decide to file a Formal Complaint with the College and/or report the incident to campus security, law enforcement, and/or State Police. In all cases where a victim submits a Formal Complaint to the College, the College will investigate the allegations.

If the College determines that the accused poses a serious and immediate threat to the College community, law enforcement may be called upon to issue a timely warning to the community. Any such warning would not include the victim’s name or any information that identifies the victim.

4. Privacy

Privacy cannot be offered by a College employee who is unable to offer confidentiality due to their legal obligation to report known incidents of sexual assault or other crimes to the Title IX Coordinator. Even College associates who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a College employee will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

5. Accused

A person accused of sexual misconduct or another violation of this policy.

6. Victim

An individual who is alleged to be the victim of conduct that could constitute sexual misconduct or other activity that would constitute a violation of this policy.

7. Bystander

Bystander includes any person who witnesses or learns about sexual misconduct or another violation of this policy who is not themselves the victim or person subjected to the sexual misconduct.

Bystanders are welcome and encouraged to report incidents of sexual misconduct that they have witnessed or learned about. If your friend is a victim of sexual misconduct, please encourage them to reach out for help.

8. Complainant

An individual who submits a “Formal Complaint” alleging sexual misconduct or another violation of this policy whether he or she is alleged to be the victim of such alleged activity.

9. Respondent

A person accused in a “Formal Complaint” of sexual misconduct or another violation of this policy.

10. Formal Complaint

A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct or another violation of this policy against a Respondent and requesting that the College investigate the allegation(s). At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity of the College. A Formal Complaint may be filed with the designated Title IX Coordinator for the College location in person, by mail, or by electronic mail, by using the Title IX Coordinator contact information listed in this policy. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this policy.

In instances where there exist allegations of sexual misconduct or another violation of this policy against more than one Respondent or by more than one Complainant against one or more Respondents, or by one party against the other party, the Title IX Coordinator may consolidate Formal Complaints if the allegations of sexual misconduct or other violation arise out of the same facts or circumstances.

IV. Scope of this Policy

The prohibitions and protections in this Policy apply to locations, events, and circumstances over which the College exercises substantial control over both the accused and the context in which the alleged sexual misconduct occurs and also includes any building owned or controlled by a student organization that the College officially recognizes. Consequently, this policy applies to on and off-campus activities and electronic and online activities so long as the alleged sexual misconduct took place on a location or in an event or circumstance over which the College exercises substantial control.

V. Procedures

These Procedures outlined below will be used to investigate and resolve all reports and complaints of sexual misconduct against Diné College students, faculty and staff members, affiliates, and non-affiliates, as appropriate. For purposes of the College’s Sexual Misconduct/Title IX Policy and these Procedures, an “affiliate” includes, but is not limited to, visiting scholars and post-doctoral fellows who are not otherwise classified as Diné College faculty, staff, or students.

All other complaints not covered by this Policy for discrimination or harassment against faculty and staff members and students, including but not limited to those based on race, color, creed, religion, ethnic origin, age, sex, disability, and sexual orientation, will be resolved using the College’s Complaint Procedures for Unlawful Discrimination or Harassment.

1. Rights of the Parties

These Procedures for the investigation, adjudication, and resolution of sexual misconduct reports and complaints brought against students, faculty, staff, affiliates and non-affiliates are designed to be accessible, prompt, fair, and impartial. Throughout this process, both the victim and the accused:

A. To be treated with respect, dignity, and sensitivity.

- B. To receive appropriate supportive measures from the College.
- C. Privacy to the extent possible, consistent with applicable law and College policy.
- D. Information about the College's Sexual Misconduct/Title IX Policy.
- E. A prompt and thorough investigation of the allegations.
- F. Notification, in writing, of the case resolution, including the outcome of any appeals.
- G. A report of the incident to law enforcement can be made at any time.

2. Preliminary Matters

A. Effect of Criminal Proceedings

The filing and processing of a report or complaint of sexual misconduct is separate from and independent of any criminal investigation or proceeding. Diné College will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation, although the College may delay temporarily these procedures for good cause including a delay needed because of pending law enforcement activity. Neither law enforcement's decision whether to prosecute an accused nor the outcome of a criminal prosecution is determinative of whether sexual misconduct occurred under the College's Sexual Misconduct/Title IX Policy.

B. Advisor

Upon the submission of a Formal Complaint, the Complainant and Respondent *may each choose* to be accompanied to any interview, meeting or hearing related to these Procedures by an Advisor, who may provide support during such interview, meeting or hearing. During meetings and interviews, the Advisor may quietly confer or pass notes with the party in a non-disruptive manner. The Advisor may not intervene in a meeting or interview, or address the Investigator. Should the matter proceed to a hearing, both the Respondent and Complainant will have the opportunity to present evidence in his/her defense and to inspect and review evidence be accompanied by an advisor of his/her choice. If a Complainant or Respondent does not have an Advisor present at the hearing, the College *will* provide an Advisor of the College's choice without fee or charge to that party. Such Advisor may be, but is not required to be, an attorney.

C. Time Frame for Complaint Resolution

The College will seek to resolve every report of sexual misconduct within forty-five (45) business days of the start of an investigation, not counting any appeals. Time frames may vary depending on the complexity of a case and the availability of witnesses, and at certain times of the academic year (for example, during breaks, study periods or final exams). The College may extend any time frame for good cause, with a written explanation to the complainant and respondent.

3. Reporting Misconduct and Filing a Formal Complaint

A. Disclosing to the Title IX Coordinator

A victim may wish to tell someone about an incident of sexual misconduct but isn't yet sure whether he or she wishes to have official action taken against the individual who committed it. Victims have the option to report (tell someone about) an incident without being obligated to file a Formal Complaint. Whether a victim chooses to report or chooses to formally file a Formal Complaint about an incident, the victim has the right to be protected by the College from retaliation and the right to receive assistance and resources (supportive measures) from the College.

It should be emphasized here that anyone can report sexual misconduct, even third parties and reports are not required to be in writing. However, if the victim is not identified, the College will not be able to provide supportive measures. The College will maintain confidential the identity of any individual who has made a report or submitted a Formal Complaint of sexual misconduct, any accused or Respondent, and any witness, except as may be permitted by FERPA, or as required by law, or to carry out the purposes of the Title IX of the Civil Rights Act regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations. Complaints alleging retaliation may be filed according to the grievance procedures in this policy.

When the Title IX Coordinator becomes aware of an incident of sexual misconduct, the Coordinator will promptly contact the victim or other reporting individual to discuss the availability of supportive measures, consider the victim's wishes with respect to supportive measures, provide information of the availability of supportive measures with or without the filing of a Formal Complaint, and explain the process for filing a Formal Complaint. The Title IX Coordinator is the person with whom a victim would file a Formal Complaint regarding sexual misconduct, if the victim wishes to do so. Upon receiving a Formal Complaint, the Title IX Coordinator will designate an Investigator to investigate the incident to determine whether the alleged conduct, if proven to be true, would constitute "sexual harassment" or "retaliation" as defined in this policy or otherwise constitutes "prohibited behavior" in this policy. The Investigator will also ensure that at the time of filing the Formal Complaint the victim is participating or attempting to participate in the College's education program or activity in the capacity as a student or employee, otherwise this policy does not apply to them.

If the Investigator determines that the alleged conduct, if proven, does not constitute "sexual harassment" or "retaliation" as defined in this policy, then the Investigator will assess whether the conduct constitutes other prohibited behavior. If the alleged conduct does not constitute any "prohibited behavior," the Investigator will dismiss the Complaint. If, however, the alleged conduct constitutes "prohibited behavior," the Investigator will investigate and commence the appropriate College disciplinary process against the accused, if that individual is a student or employee. The Title IX Coordinator will also offer the victim supportive measures as defined in this policy.

Victims can also report sexual misconduct to the Title IX Coordinator even if they do not want an investigation to occur. Such a report can be submitted anonymously or not anonymously. However, if the victim reports anonymously, the College will not be able to provide the victim supportive measures. If the victim reports without anonymity, the Title IX Coordinator will nevertheless maintain the confidentiality of any supportive measures provided to the victim (and the accused if such measures are provided to him or her) to the extent maintaining such confidentiality will not impair the ability of the College to provide such measures. All victims who report sexual misconduct will receive supportive measures and instructions on how to file a Formal Complaint should he or she decide to do so. Although the Title IX Coordinator is not a confidential resource, reporting an incident to the Title IX Coordinator while expressing one's wish for no investigation to occur is known as a "confidential report" to the Title IX Coordinator. In these cases, the Title IX Coordinator will first ask the victim's permission before beginning an investigation and commencing the appropriate disciplinary process. If the victim declines to give permission, the Title IX Coordinator will honor the victim's decision and will not investigate the report, except in

circumstances where failing to investigate would prevent the College from providing a safe and non-discriminatory environment for all members of the College community. In those cases, the Title IX Coordinator could file a Formal Complaint and commence an investigation and, if appropriate, a disciplinary process, as well, although the victim would not be obligated to participate in the investigation or the disciplinary process. In cases where the Title IX Coordinator, rather than the victim, files a Formal Complaint, the Coordinator will nevertheless treat the victim as a party to the process. Whatever the victim decides, the Title IX Coordinator will still offer the student supportive measures.

4. Disclosing to Someone Other than the Title IX Coordinator

Incidents can also be disclosed to College employees other than the Title IX Coordinator, if the victim prefers to do so. College employees are required to notify the Title IX Coordinator when an incident of sexual misconduct is disclosed to them, in order to protect the safety of other people on campus and so that the Title IX Coordinator can reach out to the victim to offer help, support, and information about filing a Formal Complaint if the victim desires. If the victim reports the incident to the College associate anonymously, the College will not be able to provide the victim supportive measures. If the victim reports the incident to the College employee without anonymity, the Title IX Coordinator will nevertheless maintain the confidentiality of any supportive measures provided to the victim (and the accused if such measures are provided to him or her) to the extent maintaining such confidentiality will not impair the ability of the College to provide such measures. The information disclosed will be limited to only the information needed to conduct an investigation (if the victim permits) and to ensure victim safety.

If the victim does not report anonymously, upon receiving notice of the report of an incident by a College employee, the Title IX Coordinator will respond to the victim by offering supportive measures and ascertain whether the victim wishes to file a Formal Complaint.

Victims can also disclose incidents to non-College officials, such as a local rape crisis center or a mental health counselor. A list of some local rape crisis centers and other community resources is provided in the Annual Fire and Security Report found on the College's website at [pwwww.dinecollege.edu](http://www.dinecollege.edu). These types of non-College officials provide confidentiality and can offer support and referrals to helpful services and resources. These persons are not affiliated with the College and have no obligation to notify the Title IX Coordinator about the incident. Consequently, if the College is not informed of the incident, victims should not expect the College to investigate the matter. However, the College will investigate allegations contained in a Formal Complaint with the College.

5. Submitting a Report or Formal Complaint Confidentially and/or Anonymously

In addition to the options described above in regard to privately or confidentially disclosing an incident of sexual misconduct, victims also have several options for making a Formal Complaint. The Title IX Coordinator is the person with whom a student would file a Formal Complaint regarding sexual misconduct, if the victim wishes to do so. Formal Complaints can be made to the Title IX Coordinator by submitting a complaint to the Title IX Coordinator in-person, via email, or via the online incident report form.

All reports of sexual misconduct made to all College employees will be handled with privacy. Those reporting instances of sexual misconduct – whether they are the victim, an employee, a friend, or a witness/bystander – can also make confidential and/or anonymous reports if they prefer to do so.

A. Confidential Reports

Reports can be made by informing the Title IX Coordinator in person or in writing that you do not want an investigation to occur.

While this reporting method is known as a “confidential report”, due to the nature of their responsibilities, the Title IX Coordinator is not truly a confidential resource. As noted above, all information provided will be handled with the utmost privacy.

When a reporting individual reports an incident of sexual misconduct but expresses that he/she does not wish for the College to conduct an investigation, the College will typically honor that request. However, sometimes the College will be obligated to weigh such a request against the College’s duty to ensure the safety of others on campus. Some of the factors the College may consider in weighing a request to not investigate may include: whether the accused has a history of violent behavior or is a repeat offender; whether the incident represents escalation in unlawful conduct by the accused individual; the increased risk that the accused individual will commit additional acts of violence; whether the accused individual used a weapon and/or force; whether the reporting individual is a minor; and whether the institution possesses other means to obtain evidence (e.g., security footage) and whether available information reveals a pattern of perpetration at a given location or by a particular group. If the Title IX Coordinator determines that a victim’s confidentiality cannot be maintained and that an investigation is necessary, the victim who reported the incident will be notified in writing, prior to the start of an investigation and will, to the extent possible, only share information with the people responsible for handling the College’s response. The Title Coordinator will remain ever mindful of the victim’s well-being and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or College employees, will not be tolerated. In these cases, should the Title IX Coordinator decide to commence a disciplinary proceeding against the accused, the Coordinator will nevertheless treat the victim as a party to the process and offer the victim supportive measures.

B. Anonymous Reports

These reports can be made by **not** including your name or email address when submitting the online incident report form. Individuals who wish to anonymously report an incident should be aware that their anonymity may inhibit the College’s ability to conduct a full investigation of the incident, provide supportive measures, and/or update the victim regarding actions taken.

Regardless of how a victim chooses to disclose the alleged misconduct, the College may not require a victim to participate in any investigation or disciplinary proceeding.

In the event that sexual misconduct has been committed by a non-member of the College community (including an unknown person or stranger), victims may still report the incident to the College and receive supportive measures and protection. For a list of on-campus and off-campus resources and support services near you please contact the Department of Human Resources.

Victims also have the option to make a report to law enforcement, either in addition to or as an alternative to making a report to the College.

6. Amnesty Policy for Alcohol and/or Drug Use

Students should not be afraid to report an incident of sexual misconduct merely because they were drinking alcohol or using drugs at the time of the incident, whether they were a victim,

witness, or bystander. Diné College has adopted an amnesty policy for alcohol and/or drug use in regard to incidents of sexual misconduct. The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College employees. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the College associates or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

7. Disclosures During Advocacy Events

Individuals occasionally disclose information regarding sexual misconduct during a public awareness and/or advocacy event, such as candlelight vigils, protests, survivor speak-outs, Take Back the Night events, Day of Unity events, and other similar public events. These events typically serve the purpose of empowering survivors and raising awareness about issues related to sexual violence, as opposed to serving as a forum in which an allegation of sexual misconduct is reported. Accordingly, the College may not investigate allegations disclosed at these events. However, any individual always remains free to report such conduct with the College and the College will investigate all allegations in a Formal Complaint. The College may use information provided at such events to inform its efforts for additional education and prevention efforts regarding sexual misconduct and sexual violence.

8. Campus Alerts

When certain crimes occur in certain areas on and/or near campus that represent a serious or continuing threat to the campus community, the College is obligated under federal law to issue a timely warning, in order to protect the safety of others. Crimes triggering a timely warning might include, for example, a rapist who is still present on campus. When a timely warning is issued, the warning will never identify any victims or reporting individuals. See the College's Annual Fire and Security Report for more information on the Campus Emergency Notification System. This report can be found on the College's website at: <https://www.dinecollege.edu>.

9. Campus Crime Data

When the Title IX Coordinator receives reports of sexual misconduct and certain other crimes that occur in certain locations on and/or near campus, federal and State laws require the Title IX Coordinator to count the number of those reports for inclusion in the College's Jeanne Clery Campus and Security Survey and inclusion in the College's Annual Fire and Security Report. This is merely an anonymous tally – neither the identity of the reporting individual nor the specifics of the crime are included in these reports.

10. Resources and Protection for Victims

Diné College is committed to supporting victims and survivors of sexual misconduct and sexual violence, regardless of when, where, or who committed the acts in question. If you or a friend need help finding resources, the College encourages you to reach out to your campus Title IX Coordinator, who can help obtain those resources. If you aren't sure who your campus Title IX Coordinator is, a list of all campus Title IX Coordinators is provided in this

policy. If you are in immediate danger at any point, call 911.

A. Obtaining Immediate Medical Attention

If you have been the victim of rape, sexual assault, domestic violence, or dating violence and are in need of immediate medical attention, please call 911 and/or consider visiting a hospital, urgent care center, or medical provider. Some State law requires that all hospitals in the State offer forensic rape examinations (sometimes also called ‘forensic sexual assault examinations’ or simply ‘rape kits’). Some states require hospitals to notify the victim/survivor that they can choose to have the forensic rape exam and its related charges billed to the Victim Services at no cost to the victim/survivor. After the exam, you might receive other medical services or counseling services for which the hospital might charge you or bill your health insurance; if your insurance plan is through someone else (such as your parent), you are encouraged to tell hospital staff if you do not want your insurance policyholder to be notified about your access to these services.

Especially in incidents of rape or sexual assault, it may be important to receive a forensic examination as soon as possible in order to preserve evidence and/or to receive protection from sexually transmitted infections and pregnancy. To best preserve evidence, you should avoid showering, washing, changing clothes, discarding clothes, combing hair, or otherwise altering your physical appearance until the exam is complete, and you should seek an exam as soon as possible. Even if you don’t want evidence to be collected, it is still recommended that you get examined by a doctor in order to address physical injuries, potential pregnancy, and possible exposure to sexually transmitted infections. For more information about what to do after an assault, visit the National Sexual Violence Resource Center website at www.nsvrc.org.

More information regarding forensic examinations and sexually transmitted infections, as well as other resources available through your campus Title IX Coordinator.

B. Provision of Supportive Measures

In addition to the above on-campus and off-campus resources, the College is prepared to offer all victims of sexual misconduct, whether reported with or without a Formal Complaint, certain protections and reasonable campus accommodations. These accommodations are known as “supportive measures” as defined above in this policy. Of course, in cases where a victim chooses to report anonymously, the College will not be able to provide supportive measures.

Below is a non-exhaustive list of protections and campus accommodations that may be available, if appropriate. To request any of the below supportive measures, please contact your campus Title IX Coordinator. Your Title IX Coordinator will then make the necessary arrangements, including coordinating with other campus offices as needed, in order to maintain your privacy.

i. No-Contact Order

Having the College issue a one-way ‘no contact’ order against the accused or a mutual no-contact order against both the accused and the victim. A no-contact order can be formulated appropriately as the circumstances warrant. The no-contact can range from prohibited communication to prohibiting physical contact.

A one-way ‘no contact’ order requires a fact-specific inquiry to determine whether imposition of such an order would be punitive, disciplinary, or unreasonably burdensome to the other party. In cases where a one-way no-contact order would help enforce a restraining order, preliminary injunction, or other court-mandated

protective order or if such an order would not unreasonably burden the other party, a one-way no-contact order may be appropriate.

When a one-way no-contact order is issued, if the accused, victim, or reporting individual observes each other in a public place, it will be the responsibility of the accused to avoid contact on the accused, leave the area immediately and without directly contacting the reporting individual and/or victim. If necessary, the College may establish a schedule for the accused and the victim to access College buildings and property at separate times. Violating the 'no contact' order could subject the accused to additional consequences and/or the involvement of law enforcement.

Both the accused and the victim will, upon request and consistent with these policies, be afforded a prompt review, reasonable under the circumstances of the need for and terms of the 'no contact' order, including potential modification and will be allowed to submit evidence in support of their his or her request.

- ii. Assistance from College associates in obtaining an order of protection or restraining order from law enforcement against the accused individual.

Orders of protection and restraining orders are similar to 'no contact' orders, except that they are imposed by a court, not by the College. If an accused individual violates an order of protection or restraining order, they could be arrested. The College reserves the right to impose consequences on accused individuals who violate orders of protection and restraining orders, such as imposing additional conduct charges and/or subjecting the accused to interim suspension.

- iii. Assistance from College campus security in calling on & assisting law enforcement in effecting an arrest when the accused individual violates an order of protection.
- iv. Emergency Removal, Interim Suspension or Administrative Leave

When the accused is determined to present a continuing threat to the health and safety of the community, to subject the accused or victim to emergency removal, interim suspension or administrative leave pending the outcome of the disciplinary process consistent with the law and the College's policies and procedures. Both the accused or victim and the reporting individual shall, upon request and consistent with the College's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of emergency removal, an interim suspension, or administrative leave and shall be allowed to submit evidence in support of his or her request.

Determinations of whether an accused poses a continuing threat to the health and safety of the College community are made by individuals at each campus. In making such determinations, these individuals act in good faith and takes into consideration:

- Whether the accused has a history of violent behavior or is a repeat offender
- Whether the reporting individual is a minor
- The nature of the allegation in question
- Subsequent behavior occurring after the allegation
- The potential risk of harm or disruption to the campus community and the reporting individual
- Other relevant factors, such as whether the alleged behavior represents an escalation in behavior from past incidents, the possession and/or use of a weapon

and/or force, whether the College possesses other means to obtain evidence (e.g. security footage), whether available information reveals a pattern of perpetration at a given location or by a particular group and whether alternatives to interim suspension or administrative leave are available.

- And/or use of a weapon, and whether alternatives to interim suspension are available.

When the threat posed implicates mental health issues, the victim will be required to provide the College with documentation from an appropriate healthcare provider in order to return to campus. Additional safety precautions may also be taken where the College deems it necessary.

When certain crimes occur in certain areas on and/or near campus that represent a serious or continuing threat to the campus community, the College is obligated under federal law to issue a timely warning, in order to protect the safety of others. Crimes triggering a timely warning might include, for example, a rapist who is still present on campus. When a timely warning is issued, the warning will never identify any victims or reporting individuals.

- v. Obtaining reasonable and available interim measures and accommodations for changes in the accused's or victim's academics, housing, employment, transportation, or other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid a hostile environment consistent with the College's policies and procedures.

Other protections, services, and accommodations that may be appropriate including, for example, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, 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 the campus.

11. Disciplinary Process for Allegations of Sexual Misconduct

In cases where this Policy is applicable, when an accused commits or is believed to have committed sexual misconduct or other conduct prohibited by this Policy – whether committed against another student, other member of the campus community, or non-member of the campus community – the accused may face conduct charges and be subjected to the College's disciplinary process. All accused who are subjected to the disciplinary process are entitled to a presumption of 'not responsible' (not guilty), and all processes will be conducted in a fair, impartial, thorough, and timely manner. However, there may be circumstances where prior to the conclusion of the disciplinary proceedings, the College deems it necessary to carry out the emergency removal or interim suspension of a student or placing an employee on administrative leave.

At all times, the burden of proof and the burden of gathering evidence is on the College to establish that the alleged violation of this policy was committed by the Respondent. The standard of evidence required in both the Sexual Misconduct Hearing and in the Appeal Hearing, if one is sought, is a preponderance of evidence. "Preponderance of evidence" means that the relevant Code of Conduct committee must decide in favor of the party that, as a whole, has the stronger evidence that the violation was or was not committed, however slight the edge over the other party's evidence may be. "Preponderance of evidence" is sometimes described as "more likely than not" or "51% probability." The evidence should be sufficient to incline a fair and impartial mind to one side of the issue over the other, but it is

not necessary for that mind to be completely free from all reasonable doubt. “Preponderance of evidence” is a different and lesser standard of evidence than that used in criminal proceedings; rather, it is the standard of evidence often used in civil court proceedings. This standard will be used for Formal Complaints against both students and employees, including faculty.

In all disciplinary proceedings brought against a Respondent, there will be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the disciplinary process.

Before or after the filing of a Formal Complaint (and even where no Formal Complaint has been filed), the College will offer without fee or charge Supportive Measures to both the accused and the victim, as appropriate and as reasonably available.

12. Informal Resolution Process

At any time prior to a Sexual Misconduct Committee reaching a determination, a Complainant may, but is not required to, seek informal resolution of his or her Formal Complaint. This informal process is not available when the accused is a College employee and both parties must voluntarily consent in writing to the informal resolution process or such a process will not be permitted. An informal resolution avoids a full investigation and Committee hearing and allows the parties to mediate a resolution. The informal resolution process is not available unless a Formal Complaint has been submitted. If a Complainant seeks an informal resolution, both the Respondent and the Complainant will be sent a written notice disclosing:

- A. That if the parties reach a mutually acceptable resolution to which they agree in writing, the Complainant will be prevented from resuming a Formal Complaint arising from the same allegations;
- B. Any party has a right to withdraw from the informal resolution process and resume the Formal Complaint process.\
- C. Should a party withdraw from the informal resolution process, all records resulting from the informal resolution process that could have been maintained by the College or shared with the College or the other party will be shared or maintained in the Formal Complaint process.

13. Sexual Misconduct Review/Investigation Process

Reports of potential and actual violations of this policy, will be processed as follows. All written notifications referenced below will be provided to both parties in a manner that requires the parties to acknowledge receipt, such as certified mail or email, return receipt requested or hand delivery with a signed receipt.

All submitted reports and Formal Complaints regarding incidents of sexual misconduct will be reviewed by the Title IX Coordinator.

The Title IX Coordinator may not have a conflict of interest or bias for or against the Complainant or the Respondent specifically or for or against Complainants or Respondents generally. A designee for the Title IX Coordinator will be appointed if a conflict exists.

In all cases where a Formal Complaint is submitted by a Complainant or signed by a Title IX Coordinator, the Title IX Coordinator (or his/her designee) will conduct an investigation into the incident reported. Upon the submission of a Formal Complaint, the victim will be referred to as the “Complainant” and the accused will be referred to as the “Respondent.”

When a Formal Complaint is submitted, the College will provide a written notice to both the

Complainant (if known) and the Respondent containing:

- A. A description of the Code of Conduct process, including the informal resolution process;
- B. The allegations of violation of behavior prohibited in this policy with sufficient details known at the time the notice is drafted. The description of the allegations include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined in this policy, and the date and location of the alleged incident, if known.
- C. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Sexual Misconduct Hearing.
- D. A statement that the parties may have an advisor of their choice, who may be, but is not required to be an attorney.
- E. Notice that the parties may inspect and review evidence.
- F. The College's prohibition of knowingly making false statements or knowingly submitting false information during the Code of Conduct process.

During the course of any investigation, if investigation is pursued about allegations of either a Complainant or a Respondent that were not included in this notice, the College will provide notice of those allegations to the parties whose identities are known.

In cases where a Formal Complaint has not been submitted by a Complainant, victims who have reported an incident of sexual misconduct – whether done so privately, confidentially, or anonymously – have the option of requesting that the College not conduct an investigation; however, under certain circumstances, the College may determine that an investigation is necessary to protect the health and safety of other students and/or the College community. When the College determines that an investigation is necessary, the victim will be treated as a party in any disciplinary proceeding. Victims who have anonymously submitted a report regarding an incident of sexual misconduct should be aware that their anonymity may inhibit the College's ability to conduct a full investigation of the incident and/or communicate with the victim regarding actions taken. In addition, such anonymity will inhibit the ability of the College to provide the victim supportive measures.

Any investigation conducted will be done so in a fair, impartial, thorough, and timely manner. The burden of gathering the evidence will be on the College and not on the parties. However, the College may not access, consider, or otherwise use a party's records that are: 1) made or maintained by a physician, psychiatrist, or other recognized professional or paraprofessional acting in their professional's or paraprofessional's capacity, or assisting in that capacity, and 2) which are made and maintained in connection with the provision of treatment to the party. However, the College may access, consider, and use these records if the College that party's (or the party's parent's, if necessary) voluntary, written consent to do so for a disciplinary proceeding.

The parties will be provided equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including evidence that the College does not intend to rely upon in reaching a determination regarding responsibility. This includes such evidence that is inculpatory or exculpatory whether it was obtained from a party or another source. Such access will be provided to ensure that the parties are able to meaningfully respond to the evidence at the conclusion of the investigation.

To this end, before the Investigator completes his or her investigative report, the College will

send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will be provided ten (10) business days to submit a written response. Any such responses will be considered prior to completion of the investigative report. At any hearing that follows, this evidence will be made available to the parties and both parties will have equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Should investigative interviews or meetings be necessary or should an individual's participation at the hearing be requested, the Investigator will provide written notice to the individual whose interview, meeting, or hearing participation is requested with the date, time, location, participants, and the purpose of the interview, meeting, or hearing 15 days before the date of the hearing or as soon as possible but with sufficient time for the participant to prepare for the meeting or interview.

Upon completion of the investigation, the Investigator will prepare an investigative report which fairly summarizes the relevant evidence. If it is decided that the Respondent should be subject to proceedings under the Sexual Misconduct hearing process, each party and any advisor will be provided a copy of the report in an electronic format or a hard copy at least 10 days before the hearing. Both parties will be given an opportunity to submit a written response to the report which will be due no later than 3 business days before the hearing.

If upon the completion of the investigation, it is determined that there is sufficient evidence to proceed to a hearing, written notice will be provided to the Respondent, Complainant, and any other party whose participation is invited or expected. The notice will contain the date, time, location, participants, and the purpose of the hearing at least 15 days before the date of the hearing. The date selected by the Title IX Coordinator will provide the Respondent a reasonable amount of time to prepare for the Sexual Misconduct Hearing while also not constituting an unreasonable delay in resolving the charges. When an alleged violation involves more than one victim or more than one Complainant, or when more than one violation is alleged to have been committed by the Respondent, the Title IX Coordinator may determine, in his/her discretion, to schedule separate Sexual Misconduct Hearings.

Upon completion of the investigation, if the Investigator determines: 1) that the conduct alleged in the Formal Complaint would not constitute "sexual harassment" or "retaliation" as defined in this Policy even if proved; 2) that the alleged conduct did not occur with respect to locations, events, or circumstances over which the College exercises substantial control over the Respondent and the context in which the alleged sexual harassment occurs; or 3) that the alleged conduct did not occur against a person physically located in the United States, the Coordinator will dismiss the Formal Complaint with respect to a claim of violation of Title IX, but may continue the proceeding if the Coordinator believes there is other conduct that, if proven, would violate another provision of this Policy.

The Investigator may also dismiss the Formal Complaint if at any time during the investigation or the hearing, if: 1) the Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegations in it; 2) Respondent is no longer enrolled or employed by the College; or 3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations in it. If the Formal Complaint is dismissed, the College will promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to all of the parties.

14. Sexual Misconduct Hearing Process

When the Investigator files Sexual Misconduct charges against the Respondent, the Investigator will promptly notify the Respondent in writing of the facts of the allegations made against him/her, the specific College policy violation committed by the Respondent if the alleged facts are determined to have occurred, the time and date on which the violation allegedly occurred, possible consequences and/or sanctions against the student for such violation, information regarding how the student can dispute the violation alleged (including the date, time, and location of a Sexual Misconduct Hearing at which the Respondent will be entitled to present evidence), and what (if any) supportive measures will be imposed upon the student while the Student Conduct Hearing is in progress (e.g., temporary suspension). Where the alleged violation involves sexual harassment or sexual harassment retaliation, the written notice will also notify the parties of their right to be accompanied at the Sexual Misconduct Hearing by an advisor of his/her choice.

The Sexual Misconduct Hearing will be conducted in a fair, impartial, and thorough manner. The Sexual Misconduct will be presided over by a Sexual Misconduct Committee, which will be composed of impartial individuals selected by the Title IX Coordinator. The Title IX Coordinator may not serve on the Committee. Committee members may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent specifically.

The Committee will hear all evidence presented on the alleged violation. During the Sexual Misconduct Hearing, the Respondent will have the opportunity to present evidence in his/her defense and to inspect and review evidence be accompanied by an advisor of his/her choice. Likewise, the Complainant may, if he/she desires, also have the opportunity to present evidence of the incident and to be accompanied by an advisor of his/her choice. Such advisor for both parties may be, but is not required to be, an attorney. Such advisor may accompany the party not only at the hearing but also at any interview or meeting. However, the investigator and the Committee may establish restrictions on the extent to which the advisor may participate in the hearing, interview, or meeting. Such restrictions will apply equally to both parties.

During the hearing, the Committee will objectively evaluate all of the relevant evidence—including both inculpatory (evidence indicating culpability) and exculpatory evidence (evidence indicating lack of culpability). The Committee will not make credibility determinations based on a person's status as a Complainant, Respondent, or witness.

The Sexual Misconduct Committee will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

During the course of the Sexual Misconduct Hearing, the College will not restrict the ability of either party to discuss the allegations under investigation or to gather and then present relevant evidence. The parties will be given an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The Sexual Misconduct Hearing will be live (in person) with the following procedural rights and restrictions:

- A. The Sexual Misconduct Committee will decide on the location of the hearing. Depending on the circumstances, the Committee may hold the hearing with all parties physically present in the same geographic location or it may decide to have any or all parties, witnesses, and other participants to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. An audio or audiovisual

recording, or transcript, of any live hearing will be made available to the parties for inspection and review. This record will be maintained for seven years.

- B. The Committee will permit each party's advisor to cross-examine the other party and any witnesses' relevant questions and follow-up questions, including those that challenge credibility.
- C. If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- D. All cross-examination will be conducted directly, orally, and in real time by the party's advisor and never by the party personally. Only relevant cross-examination and other questions may be asked of a party or witness. The party or individual being examined by the other party's advisor will await a relevancy determination from the Committee Chair before answering each question. Should the Committee Chair exclude the question, the Chair will explain the reason for the exclusion.
- E. If a party or witness does not submit to cross-examination at the live hearing, the Committee will not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the Committee will not draw an inference about the determination regarding Respondent's responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- F. If either party so requests, the hearing will be carried out with the parties located in separate rooms with technology, such as video conferencing, which enables the Code of Conduct Committee and the parties to simultaneously see and hear the party or witness answering questions.
- G. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
- H. After all evidence has been presented in the hearing, the Committee will render a decision as to whether the Respondent is "responsible" (guilty) or "not responsible" (not guilty) for the violation and will impose consequences and/or sanctions on the Respondent if found "responsible", if appropriate. If the Respondent fails to or declines to attend the hearing, the hearing will be held without the Respondent present and the Committee may reach a decision of "responsible" and impose consequences and/or sanctions even in the Respondent's absence. However, the Committee will not make a determination based solely on the absence of the Respondent.
- I. Upon conclusion of the hearing, the Committee will privately deliberate and will issue a written determination applying the preponderance of the evidence standards. The written determination will be simultaneously sent to both parties within 5 days of the conclusion of the hearing and will include:
 - i. A summary of the allegations including which provisions of this policy were alleged to be violated;
 - ii. A summary of the procedural steps the College carried out from receipt of the Formal Complaint through the determination, including notifications to the parties,

any interviews with parties and/or witnesses, any site visits, other methods used to gather evidence, and hearings held.

- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding the application of this policy to the facts;
- v. With respect to each allegation, a statement of the determination of responsibility, any disciplinary sanctions imposed, and whether any restorative remedies will be provided to the Complainant;
- vi. A description of the process and permissible bases for either the Complainant or the Respondent to appeal. The Committee will not make a determination based solely on the absence of the Respondent.

Either the Respondent “responsible” or the Complainant may commence his/her appeal by following the procedures described in the paragraphs titled “Appeals Process” below. In the event an appeal is requested, the Committee’s decision will be protected from public release by the College until the Appeals Process is complete and final, unless the law requires otherwise. However, the parties involved may choose whether or not to discuss or disclose the outcome of the hearing.

If a party does not commence an appeal within ten days from receiving written notification of the Committee’s decision, then the Committee’s decision will be final.

15. Appeals Process

Any Respondent found “responsible” by a Sexual Misconduct Committee and any Complainant following a dismissal or finding of “not responsible” may appeal the Committee’s decisions, including its determination of responsibility and/or the consequences/sanctions imposed.

Any party seeking an appeal of the Committee’s decision(s) (“Appellant”) must submit a written request for an appeal to the Title IX Coordinator within ten days of receiving written notification of the Committee’s decision. The written request for appeal must include a brief statement of the basis of the appeal. Permissible bases for appeal are:

- A. A procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the Committee made the determination regarding responsibility or dismissal, which could affect the outcome of the matter;
- C. The Title IX Coordinator, Investigator, or a member of the Sexual Misconduct Committee had a conflict of interest or bias for or against complainants or respondents, in general, or the individual Complainant or Respondent specifically that affected the outcome of the matter;
- D. The burden of proof was met or was not met but the Committee concluded otherwise;
- E. The appealing party objects to the Committee’s determination of responsibility, the imposed consequences/sanctions, or both.

Upon receiving the Appellant’s written request for appeal, the Title IX Coordinator will schedule the date for an Appeal Hearing, to be held in a timely manner at a campus location or virtually. Upon scheduling the Appeal Hearing, the Title IX Coordinator will provide written notification of the location, date, and time to both the Respondent and the Complainant.

The Appeal Hearing will be conducted in a fair, impartial, and thorough manner. The Appeal Hearing will be presided over by a panel of impartial individuals selected by the Title IX Coordinator. The Title IX Coordinator, any individual who served on the Sexual Misconduct Committee, or the Investigator may not serve on the Appeal Hearing panel. In addition, no member of the Appeal Hearing panel may have a conflict of interest or bias for or against complainants or respondents, in general, or the Complainant or Respondent specifically. When such an appeal is submitted, the non-appealing party will be notified in writing of the appeal and these procedures will be applied equally to both parties. Both parties will be given the opportunity to submit a written statement in support of or challenging the outcome of the Committee's determination before the Appeal Hearing.

The Appeal Hearing panel will hear all arguments presented in regard to whether the Committee's decisions were appropriate. After all arguments have been presented, the Appeal Hearing panel will render a written decision on the appealed issues and, if appropriate, impose revised consequences/sanctions on a party. Within five days of the Appeal Hearing, the parties will simultaneously be sent written notification of the Appeal Hearing panel's decision and the rationale for such decision. The Appeal Hearing panel's decisions are final and are not subject to further appeal.

16. Timeframes

Any of the deadlines in this Policy may be extended upon the showing of good cause. When considering whether to grant an extension, the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance, or accommodation of disabilities will be considered. Where extensions are granted, the Complainant and Respondent will be provided written notice of the extension or delay and the reasons for the action.

17. Possible Sanctions

The following possible sanctions may be imposed as a result of a Sexual Misconduct Hearing and/or an Appeal Hearing. In addition, if at any point (whether during or prior to any such hearing) the presence of a student or College associate on campus creates a threat to the health, safety, and/or well-being of other students or other members of the College community, the College reserves the right to immediately remove that individual from campus until the time of the Sexual Misconduct Hearing and/or Appeal Hearing.

The following list of the range of possible consequences/sanctions is not exhaustive, and these consequences/sanctions may be imposed singularly or in any combination. Different and/or additional consequences or sanctions may be imposed by a Sexual Misconduct Committee and/or Appeal Hearing panel as they may deem appropriate. Pursuant to individual State law, all parties involved – both the Complainant and the Respondent – will receive written notice of any imposed consequences/sanctions and the rationale in support of such consequences/sanctions.

- A. No Consequences/Sanctions: Where the Sexual Misconduct Committee and/or the Appeal Hearing panel, in the event an appeal is sought, determines that a Respondent is "not responsible", the Code of Conduct charges against the Respondent will be dismissed and the Respondent's name will be cleared.
- B. Written Warning: A notice in writing that the Respondent is violating or has violated institutional regulations.
- C. Probation: A written reprimand for violation of specified regulations which places the Respondent in a probationary status for a designated period of time. Violation of any

College rules or policies during a probationary period may result in the imposition of additional and/or more severe disciplinary sanctions.

- D. Discretionary Sanctions: Work assignments, essays, or other discretionary assignments.
- E. Loss of Privileges: Denial of specified privileges for a designated period of time.
- F. Restitution: Financial reimbursement for damages to property.
- G. Community Service: A stated number of hours, set in writing, of donated service.
- H. Permanent “No Contact” Order: A permanent ‘no contact’ order effective for the duration of the Respondent’s enrollment or employment at the College requiring the Respondent found to be “responsible” to stay away from the Complainant against whom he/she has committed misconduct. This may be imposed in addition to any interim “no contact” order already issued.
- I. Residence Hall Suspension: Separation of a Respondent student from the residence halls for a defined period of time, after which the Respondent student is eligible to return. Conditions for readmission may be specified.
- J. Residence Hall Expulsion: Permanent separate of the Respondent student from the residence halls.
- K. College Suspension: Separation of the Respondent student from the College for a definition period of time, after which the student is eligible to return. Conditions for readmission may be specified. This sanction automatically results in a Transcript Notation sanction.
- L. Disciplinary Dismissal or Expulsion from the College: Permanent termination of status as a student or employee of the College. This sanction, if imposed on a student, automatically results in a Transcript Notation sanction.
- M. Transcript Notation: For crimes of violence carried out by a Respondent student, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S. C. 1092(f)(1)(i)(I) –(viii), the College will make a notation on the transcript of students found responsible after a disciplinary hearing that they were “Suspended after a finding of responsibility for a Code of Conduct violation” or “Expelled after a finding of responsibility for a Code of Conduct violation,” as appropriate. For a Respondent who withdraws from the College while such charges are pending, and declines to complete the disciplinary process, the College will make a notation stating, “Withdrew with conduct charges pending.” Transcript notations regarding expulsion, suspension and withdrawal shall be permanent. Suspended Respondent students may appeal such notation and seek its removal after one year after conclusion of the suspension. A Respondent student subjected to suspension or expulsion, and by extension subjected to an automatic transcript notation, may appeal this sanction by commencing the appeals process within the required timeframe. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.
- N. Other consequences and/or sanctions as deemed appropriate by the Sexual Misconduct Committee and/or Appeal Hearing panel.

VI. Recordkeeping

The College will maintain records of the following for seven years:

1. Each investigation of alleged violations of this Policy including any determination regarding

responsibility and any audio or audiovisual recording or transcript of a Code of Conduct Hearing;

2. Disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant to restore or preserve equal access to the College's programs and activities;
3. Any appeal and the results of that appeal;
4. Any informal resolution and the results of that informal resolution;
5. All materials used to train Title IX Coordinators, investigators, Code of Conduct Hearing Committee members or members of Appeal Panels, and individuals who facilitate an informal resolution process. These training materials will be made available on the College's website;
6. Supportive measures taken in response to a report or Formal Complaint alleging violation of this Policy and the basis for the College's conclusion that its response was not deliberately indifferent and how such measures were designed to restore or preserve equal access to the College's program and activities;
7. The reasons why supportive measures for a Complainant were not provided in cases where they were not provided and why the lack of such measures was not clearly unreasonable in light of the known circumstances.

VII. Training

Title Coordinators and their designees, Sexual Misconduct Committee members, Investigators, members of Appeal panels, and any person who facilitates an informal resolution process will receive training on the following:

1. The definition of "sexual harassment" as defined in this policy;
2. The scope of the College's education or activity, *i.e.*, the locations, events, and circumstances over which the College exercises substantial control and any buildings owned or controlled by any student organizations that the College officially recognizes;
3. How to properly conduct an investigation and Sexual Misconduct hearing including hearings, appeals, and the informal resolution process. This also includes training on how to serve in their capacities impartially and avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
4. Technology used at live hearings; and
5. How to assess relevance of questions and evidence, including when questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant;

Title IX Coordinators and Investigators will receive training on issues of relevance when creating an investigative report that fairly summarizes relevant evidence. The training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

VIII. Form(s) and/or Equipment

1. Formal Complaint Form