

# **Interim Sexual Misconduct Policy**

*Effective August 14, 2020*

We pledge continuing efforts to build and strengthen a community enriched by our differences and founded upon our common humanity.

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## **I. Overview of Sexual Misconduct**

As a fundamental policy and in compliance with Title IX of the Education Amendments Act of 1972 (“Title IX”), Section 504 of the Rehabilitation Act of 1973, and all other applicable federal and state non-discrimination laws, Centre College does not discriminate on the basis of race, color, religion, national or ethnic origin, sex, sexual orientation, age, disability, veteran's status, or genetic information in its educational programs and activities, admissions, and with regard to employment. Harassment based upon an individual's legally protected status is a form of prohibited discrimination. Centre College hires and promotes its employees and admits its students on the basis of merit, qualification, and character. This Policy addresses the College's prohibition of sex discrimination. Sexual harassment, sexual assault, and other forms of sexual misconduct are forms of sex discrimination prohibited by Title IX and the College's conduct standards and policies prohibiting sex discrimination.

Centre College is committed to a safe and healthy environment and, as such, will not tolerate sexual misconduct of any kind. In addition to violating this Policy, any form of sexual misconduct may also be a violation of federal and state laws.

Sexual misconduct is a broad category of behaviors that includes but is not limited to sexual harassment, sexual violence, sexual exploitation, sexual abuse (include sexual abuse of a minor), dating violence, domestic violence, stalking, cyber-stalking, bullying and cyberbullying when based on sex or gender.

This Policy also expressly prohibits aiding or facilitating the commission of sexual misconduct, and retaliation against any individual involved in bringing a claim or supporting someone who brings a claim under this

Policy. Sexual misconduct and other terms found within this Policy are defined in Section V below.

Sexual misconduct can occur between strangers or non-strangers, including people involved in a dating, intimate, or sexual relationship. Sexual misconduct can be committed by or experienced by persons of any gender, and it can occur between people of the same or different gender.

All students, faculty, staff (including medical staff), volunteers, contractors and visitors of the College, regardless of role, tenure, or compensation, are subject to this Policy. Sexual misconduct committed in connection with any College-sponsored activity is prohibited whether on or off campus. This Policy may also apply to off-campus conduct that the College has determined may cause an unacceptable disruption to the College or which may infringe on an individual's right to a non-discriminatory education and/or work environment.

Individuals who violate this Policy are subject to disciplinary action deemed appropriate by the College; up to and including termination for employees, contractors, and volunteers; and up to and including no trespass orders for guests. Students are subject to sanctions up to and including suspension and expulsion. (The complete list of possible sanctions for a violation of this Policy is included below in Section IV.)

## **II. Resources**

The College offers assistance and non-judgmental support to any party involved in an incident of sexual misconduct. The College understands that individuals involved in an incident of sexual misconduct will have questions and may need the support of on- and off-campus services. All parties are encouraged to utilize both on-campus and off-campus resources for assistance.

Any member of the College community involved in an incident of sexual misconduct can expect:

- The opportunity to meet with the Title IX Coordinator.
- The opportunity to work with a Process Navigator (see below for details).
- Details about available on- and off-campus confidential resources, including medical assistance and counseling services.
- Information on the option to file a complaint with law enforcement authorities and assistance, if requested from the Department of Public Safety or other College officials in notifying and communicating with such authorities.

- Immediate measures by the College to prevent unnecessary or unwelcomed contact with or proximity to the other party. Such measures may include housing relocation, the imposition of no-contact orders, and adjustments to course or work schedules to prevent contact, as determined appropriate by the Title IX Coordinator or an official designated by the Title IX Coordinator.
- The right to be free from retaliation.

### **Process Navigator**

The College will appoint individuals to serve as Process Navigators to work with the parties, students or employees, and provide information to them for all stages of the Sexual Misconduct process, including but not limited to reporting, engaging in the formal or informal process, interim measures, the investigation, possible disciplinary outcomes, appeals, and any related questions or concerns. The process navigators will be appropriately trained to assist the parties.

### **Title IX Coordinator**

The Title IX Coordinator is the designated representative of the College with primary responsibility for coordinating the College's Title IX compliance efforts. The Title IX Coordinator shall ensure that the College responds to all reports in a timely, effective, and consistent manner. In addition, the Title IX Coordinator is responsible for ensuring that the review, investigation, and resolution of all reports of sexual misconduct are done according to this Policy and applicable law.

The Title IX Coordinator is the primary person designated as an Official with Authority to Take Corrective Action (OWA) to redress sexual harassment and misconduct. OWAs are employees on whom the College has conferred authority to take corrective action to end the discrimination or to redress the sexual harassment.

Contact information for the Title IX Coordinator:

**Kay L. Drake, Title IX Coordinator, Investigator**  
Vice President for Human Resources and Administrative Services  
Horky House, First Floor  
859-238-5464  
kay.drake@centre.edu

The Title IX Coordinator oversees the resolution of reported sexual harassment and other sexual misconduct through the College's resolution processes, described in this Policy.

Questions or concerns may also be directed to the Office of Civil Rights of the United States Department of Education. (The OCR Office for colleges in the state of Kentucky is in Philadelphia.)

U.S. Department of Education  
Office for Civil Rights  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: 215-656-8541  
TDD: 877-521-2172  
Fax: 215-656-8605  
E-mail: OCR.Philadelphia@ed.gov

### **What to Do if You Need Immediate Help:**

Any student, employee, or member of the College community who experiences sexual violence is encouraged to immediately notify law enforcement (911) and/or seek immediate medical assistance. Centre College's Department of Public Safety will provide transportation, upon request. The Department of Public Safety can be reached at 859-236-4357 or by dialing for "HELP" (4357) on a campus phone.

If you have experienced sexual violence, you are advised to:

1. **Go** to a safe place.
2. **Call** someone that you trust - a good friend, your family, a counselor, or a chaplain.
3. **Seek** medical care as soon as possible at any emergency medical facility, such as Ephraim McDowell Regional Medical Center's Emergency Room or the University of Kentucky Emergency Room. To preserve your legal options, it is important to have a medical exam to assess for physical injuries and to collect evidence. You may have the exam and then decide not to pursue legal action. The medical provider will address the risk of pregnancy and sexually transmitted infections. Prophylactic medications will be offered. The medical examination is free. To preserve evidence and to assist the examination:
  - **Be sure NOT to** bathe, douche, urinate, or defecate prior to arriving at the Emergency Room.
  - **Be sure NOT to** change clothes. If you have already removed clothing, place it in a paper bag and bring it with you.
  - **Take** extra clothes with you, as clothing will likely be held as evidence.
  - **Please** ask for someone you trust or a member of the Faculty or Staff to go with you.

Please note that most employees of the College (including Resident Assistants) are obliged to report information about sexual misconduct to the Title IX Coordinator; see Article III, Confidentiality, for a list of confidential resources.)

4. **Report** the assault to campus authorities, local law enforcement and/or to one of the members of the Title IX Team (however, see below regarding confidentiality). Individuals are strongly encouraged to come forward to report an assault and to receive appropriate professional counseling. In addition to being a violation of this Policy, sexual assault is a criminal act, and the College takes sexual misconduct very seriously. Centre College is committed to ensuring a safe campus for all students and employees.

### **III. Reporting Obligations, Options, and Considerations**

In this policy, the following terms and definitions will be used:

- **Report** – any complaint or information provided to the Title IX Coordinator, or another person specified in this Policy as an Official with Authority to Take Corrective Action (OWA) regarding an incident of sexual misconduct, whether provided by the person experiencing the incident of sexual misconduct, a third party, or another.
- **Complainant** – the individual who reports to have experienced or is reported to have experienced an incident of sexual misconduct.
- **Respondent**– an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or sexual misconduct.

The College strongly encourages persons who experience any incident of sexual misconduct to report the incident as soon after the incident as possible. A Complainant has the right and can expect to have incidents of sexual misconduct taken seriously by the College when reported. Only people who need to know will be told and information will be shared only as necessary with investigators, witnesses, and the Respondent.

Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality under Title IX and College policy, depending on their roles. When consulting campus resources or speaking with someone at the College about sexual assault, you should be aware of confidentiality and mandatory reporting as required by law in order to make informed choices.

#### **\*\*Reports Involving Minor Children**

Under Kentucky law (KRS 620.030), any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or to the Department of Kentucky State Police, the Kentucky Cabinet for Health and

Family Services or its designated representative, the Commonwealth's attorney, or the county attorney, by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. The Title IX Coordinator, with support from other appropriate offices as necessary, will help determine appropriate next steps. All authorities designated under state law, such as law enforcement and/or child protective services, will be notified as required. The minor's parent or guardians will be notified.

Anyone participating in a College-affiliated program or activity involving minors or a non-College program or activity operating on campus involving minors who knows, suspects, or receives information indicating that a minor has been abused or neglected, or who has other concerns about the safety of minors, in addition to complying with legal obligations to inform public authorities, as detailed above, MUST inform the College's Title IX Coordinator, Kay Drake, by calling 859-238-5467, by visiting her office in Horky House, or by emailing her at [kay.drake@centre.edu](mailto:kay.drake@centre.edu)

If you are unsure of someone's duties and ability to maintain the confidentiality of your conversations, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can best assist and/or support you.

### **Responsible Employees**

Certain employees at the College are considered "Responsible Employees" under Title IX, which means that they are employees who are required to report any alleged sexual misconduct incidents to the Title IX Coordinator, but that they are not deemed OWA's because the College has not conferred upon them authority to take corrective action to end the discrimination or to redress the sexual harassment. As stated above, however, all employees are required to report known or suspected incidents of sexual abuse of a minor to the Title IX Coordinator and/or Department of Public Safety.

The following are Responsible Employees under this Policy:

- The President of the College;
- All members of the senior administration (vice presidents, associate vice presidents, deans, athletic director, special and executive assistants to the president, and the chief communications officer);
- All employees within the Department of Public Safety;
- The Student Life Office members;
- Resident Assistants and Residence Directors;
- The Athletics Department;
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- The Human Resources Office; and
- All Faculty.

To formally report an incident of sexual misconduct and/or related concern, you must provide the Report to the Title IX Coordinator or any other person identified as an OWA (Official with Authority to Take Corrective Action).

Once the Title IX Coordinator or any OWA receives a Report from anyone of sexual harassment, the Title IX Coordinator will reach out to the person who is identified as the Complainant, offer supportive measures and explain how to file a formal complaint. Supportive measures include individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party, designed to ensure equal educational access, protect safety, or deter sexual misconduct. Supportive measures are available regardless of whether the Complainant files a Formal Complaint or takes other action. The Title IX Coordinator will consider the complainant's wishes regarding supportive measures.

Once in receipt of a Report, the Title IX Coordinator or an OWA will provide information about similar measures, such as existing services and potential accommodations or protective measures, how the institution will protect confidentiality, the importance of preserving evidence, and options about the involvement of law enforcement.

You may also inform any of the Responsible Employees, listed above. Because the College is required by law to investigate these matters, all Responsible Employees must report any claims or incidents arising under the Sexual Misconduct Policy to the Title IX Coordinator.

Notice to a Responsible Employee will not be considered "actual notice" to the College unless and until the Responsible Employee notifies the Title IX Coordinator or someone designated as an OWA. Once an individual, including an individual who is not an OWA, reports potential sexual harassment to the Title IX Coordinator or any OWA, the College has actual knowledge and its obligation to take action is triggered.

### **Confidentiality**

Once the College has received a Report or Formal Complaint of possible sexual misconduct, complete confidentiality may not be possible. The College is required by law to protect the safety of its campus and its campus community. When the College receives a Report of sexual misconduct, it has a legal obligation to respond in a timely and appropriate manner. Reasonable attempts will be made to preserve confidentiality. Publicly available records will not contain personally identifiable information. Only those employees with a legitimate need-to-know will be kept apprised of

details. When a Formal Complaint is filed and an investigation begins, Complainants and Respondents are required to have equal access to review any evidence that are directly related to the allegations in the Formal Complaint. Additionally, the College may not restrict the ability of the Complainant or the Respondent to discuss the allegations or to gather or present relevant evidence. and any third-parties involved in an investigation will be advised of the need to preserve confidentiality.

However, based on information gathered, the College may determine that it has a responsibility to initiate an investigation or a complaint procedure (even without the Complainant's participation). The College will balance any requests for confidentiality against the responsibility to provide a safe and nondiscriminatory environment for all students, staff, and faculty. Complete confidentiality could handicap the College's ability to conduct a thorough investigation of the allegations and to fulfill its legal obligations to the parties. The College is required to investigate all reports of sexual abuse of a minor and all reports of sexual abuse of a student of the College by a member of the faculty or staff or other non-students.

The Title IX Coordinator will evaluate all requests for confidentiality to determine the extent to which the College can preserve confidentiality and forego a formal investigation while still satisfying its obligations under Title IX and this Policy. In determining whether a Reporting Party's request for a report of sexual misconduct can be kept confidential or not be acted upon, Centre College will consider multiple factors, including:

- whether the incident involved the use of a weapon;
- if there have been other reports of misconduct committed by the accused student;
- whether the incident involved multiple perpetrators;
- whether the incident suggests a pattern of misconduct at a particular location or by a particular organization or person;
- the risk of harm to self or others; or
- the Complainant's willingness to pursue a complaint.

When the College is obligated to provide the College community with timely warnings, names of the individuals are not used and every effort will be made to remove identifying information.

### **Confidential Disclosure**

Despite the College's strong interest in having individuals report allegations of sexual misconduct, the College realizes that not every individual is prepared to make a Report to or to file a Formal Complaint with the College.

The College has designated certain specific persons as confidential resources for individuals who prefer to speak with someone confidentially about their concerns. These confidential resources will not tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others, or if the sexual misconduct reported involves a minor.

If you want details of the incident to be kept confidential, you should speak with one of the following confidential resources:

- Centre College Counselors;
- the College Chaplain;
- Parsons Student Health Center staff; and/or
- Off-campus mental health providers or rape crisis providers (even if they are providing services on campus, they are considered providers from outside the College and are, therefore, confidential resources).

Persons in these positions are not required to disclose any personally identifiable information given in confidence, unless given permission by the individual, the allegations involve the physical or sexual abuse of a child or vulnerable adult, or there is an imminent threat to the life of any person. (On-campus Confidential resources will submit non-identifying, anonymous information about violations of this Policy to the Department of Public Safety for purposes of legally required statistical reporting under the Clery Act.)

### **Reports to Law Enforcement**

As noted above, Complainants are strongly encouraged to notify local law enforcement authorities of any criminal sexual misconduct. Individuals will be assisted, upon request, in notifying law enforcement by the Department of Public Safety or the Title IX Coordinator. They can assist you with making claims, petitioning for restraining orders, and/or advising on other legal options that may be available to you. If requested, they will accompany you to the police station. Ampersand (formerly known as the Bluegrass Rape Crisis Center) can also assist with restraining orders, legal resources, or accompany to the police department.

Note that if you choose only to communicate with a confidential resource and do not notify an Official with Authority to Take Corrective Action (OWA) or law enforcement, no further action will be taken.

## **IV. Complaint Procedures**

Any person may file a Formal Complaint with the Title IX Coordinator or other OWA as a person, or on behalf of another person, alleged to be the victim of conduct that could constitute sexual misconduct under this Policy. The person alleged to be the victim of the misconduct is the Complainant. The Title IX Coordinator may choose to sign a Formal Complaint on behalf of the Complainant, if the Title IX Coordinator determines that the signing a Formal Complaint to initiate an investigation over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances, including because of the need to protect the safety of the College community or of the Complainant.

A "Formal Complaint" is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct against a Respondent and requesting that the College investigate the allegation of sexual misconduct.

If an individual decides to file a Formal Complaint, a detailed, written (typed, emailed, or handwritten) statement of the alleged incident(s) must be submitted to the Title IX Coordinator. This formal statement must be signed and dated. The statement should be as specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the accused person(s). A list of any person(s) who may have information that would be helpful to the review and resolution process should also be provided. See the Formal Resolution Process below.

If the Title IX Coordinator determines an investigation is necessary and appropriate (even in the absence of the filing of a Formal Complaint, if the Title IX Coordinator determines it is necessary to protect the safety of the College community or the Complainant), the investigation will normally begin within 5 business days, unless unusual or complex circumstances exist. (See below, under Formal Resolution Process, for details of what is involved in an investigation). The investigation will be timely and impartial. Barring unusual or unforeseen circumstances, the investigation will be completed, including any formal proceedings that occur, within 60 calendar days from the time a formal complaint is initiated. If the investigation extends beyond 60 calendar days, the College will explain the reason for the delay to both parties and keep them apprised of the modified timeline.

### **College's Responsibility**

Once a Formal Complaint of sexual misconduct is filed, the College is obligated by law to investigate and to take appropriate action regardless of whether the Complainant wishes to participate. or considers the behavior

sexual misconduct. However, in certain circumstances the College may or must dismiss the complaint.

The College's authority to investigate, to compel cooperation, or to impose sanctions against those who are not members of the College community is limited. The informal and formal processes as described below apply to faculty, staff, and students of the College. Complaints against guest lecturers, volunteers, vendors, and visitors will be referred to the Title IX Coordinator or his/her designee for investigation and appropriate action.

### **Immediate College Action**

Upon receiving a Formal Complaint of sexual misconduct, the Title IX Coordinator or a College employee the Title IX Coordinator designates will take additional appropriate actions to protect the safety and well-being of the individuals involved in a complaint of sexual misconduct. Generally, such actions include but are not limited to the following:

1. Send written notice to the Respondent of the allegations made;
2. Provide a copy of the Sexual Misconduct Policy, that includes a copy of the College's grievance process, to both parties ;
3. If appropriate, establish an agreement between the parties that they are not to initiate contact with the other party or parties until further notice by the College. Failure to cooperate or honor the agreement could result in restricting either party's presence on campus;
4. If appropriate, take such other immediate measures to prevent contact with or proximity to the other party, including housing relocation, adjustment to work or class schedules and/or other measures as deemed appropriate by the Title IX Coordinator or designee.
5. Have each of the parties and any witnesses acknowledge the expectation of confidentiality as outlined in this Policy and advise both parties that nothing in the Policy restricts their ability to discuss the allegations or to gather and present relevant evidence;
6. Advise all parties and any witnesses that they may not retaliate against any party or any witness involved in any investigation under this Policy.
7. Notify the parties of the allegations in sufficient detail and with sufficient time to prepare a response before any interview. This may include notice that some of the conduct alleged may violate other College conduct requirements. If, in the course of the investigation, the College learns of conduct that may violate College conduct requirements, the parties will be notified.
8. Notify the parties that the Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made at the conclusion of the process.

9. If the report involves sexual misconduct involving a minor, the Title IX Coordinator and/or Department of Public Safety will notify all appropriate law enforcement and child protective agencies.

### **The Rights of the Parties**

The Complainant and Respondent can expect the College to respect the rights of all involved by following the appropriate stated College sexual misconduct resolution process.

Rights of the Complainant and the Respondent:

- To choose to pursue an informal process or formal process, if applicable, as outlined in this Policy.
- To have the allegations investigated in a thorough, unbiased, and timely manner.
- To refrain from making self-incriminating statements and from participating in the process. (However, the College will make a determination of whether a violation of the Sexual Misconduct Policy occurred based on the information presented.)
- To be informed simultaneously of the outcome of the sexual misconduct resolution process.
- To have an advisor of their choice.
- To be treated equitable and to have an equal opportunity to present both fact and expert witnesses and inculpatory and exculpatory evidence.
- To be notified of date, time, location, participants, and purpose of all hearing investigative interviews, or other meetings, with sufficient time to prepare for participation.

### **Availability of Formal and Informal Resolution Options**

When a Reporting Party or the College chooses to move forward with a Formal Complaint, there are two avenues for resolution of an alleged policy violation; formal and informal resolution. Informal resolution is permissible where all parties voluntarily agree to participate in an informal resolution except that informal resolutions are not available if the Complainant is a student and the Respondent is an employee. An informal resolution does not involve a full investigation and adjudication (finding of responsibility). An informal resolution may proceed after both parties receive a full disclosure of the allegations and their options for formal resolution and if the College determines that the particular complaint is appropriate for informal resolution. If a Formal Complaint is processed informally, the Complainant, Respondent, or College has the option to move the complaint to the formal process at any time. *The Informal Process and/or mediation are typically not available in cases involving sexual violence, but if the informal*

*process is requested, the parties and the College could agree to pursue an informal process.*

Each resolution process is guided by the same principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or Respondents to provide guidance throughout the investigation and resolution of the complaint. These resources are maintained by the Title IX Coordinator and available through the Student Life, Human Resources, and Academic Affairs offices, as appropriate.

While the resolution processes for students, faculty, and staff might differ from one another, each process will include the following, essential attributes:

- The parties will have an equal opportunity to present relevant witnesses and other evidence;
- While it is not required of any party to have an advisor, each party has the opportunity to have present an advisor of their choice, who may be an attorney or Ampersand advocate, but that advisor may not participate in the meeting, hearing, or procedure, other than advising the party, except to conduct cross examination of witnesses in a live hearing;
- In any resolution process involving a standard of proof, the College will use the preponderance-of-the-evidence standard (that is, more likely than not that sexual misconduct occurred);
- The burden of demonstrating that a case of sexual misconduct occurred and that the Respondent is responsible for that misconduct lies with the College;
- If either party is allowed to introduce third-party expert testimony, both parties will be allowed to do so on the same basis;
- Where appeals are allowed, each party will have the same opportunity to appeal as the other; and
- Both parties will be notified, in writing at the same time, of the outcome of both the complaint and any appeal.

### **Informal Resolution Process**

#### **Purpose**

The informal process is an opportunity to bring resolution to an informal complaint through awareness, education, and/or a facilitated discussion. In order for an informal resolution process to be available to the parties, there must first be a Formal Complaint filed. Then if either party requests, or if the Title IX Coordinator recommends, an informal resolution process, then

the Title IX Coordinator, or the Title IX Coordinator's designee, shall provide both parties, in writing, notice of all the allegations, explain that each party retains the ability to withdraw from the informal process and return to the formal process at any time prior to agreeing to a resolution, and explain any consequences from participating in the informal process including what records will be kept or shared. To move forward to attempt an informal resolution, the parties must provide their written, informed, and voluntary consent.

If these conditions are met and the parties wish to attempt information resolution, then the Title IX Coordinator will appoint a trained College official to facilitate the informal resolution. During an informal process, written statements are not taken from the Complainant or the Respondent, and no hearing is conducted. As such, there will not be a finding of responsibility for a violation, nor will there be disciplinary sanctions levied against a Respondent; however, there could be requirements of certain behavior or the undertaking of certain acts that are required as a part of the informal resolution of the matter.

### **Step 1: Facilitate Resolution**

This process utilizes the information gathered during the preliminary inquiry or investigation to facilitate an appropriate resolution to the informal complaint. The following are examples of possible options, one or more of which may be used to bring resolution to an informal complaint.

#### **Potential Informal Actions:**

1. Distribute a copy of the Sexual Misconduct Policy as a reminder to the person, group, or area where behavior is being questioned;
2. Educate all parties regarding the College's Sexual Misconduct Policy;
3. Advise the person(s) how to communicate the unwelcome nature of the behavior to the alleged harasser;
4. Conduct a sexual misconduct educational workshop for the designated group or department;
5. Meet with the Respondent to raise awareness about alleged inappropriate behavior and provide notice about possible College consequences;
6. Facilitate a discussion among all the parties involved, if all parties are in agreement to do so;
7. Institute alternative work/ living arrangements, class schedule, advisor/supervisor arrangements; or
8. Limit contact or impose a no-contact order between the Complainant and Respondent.

## **Step 2: Document Informal Resolution**

At the conclusion of the informal process, a letter summarizing the outcome(s) of the process will be sent by the College official leading the process to the Complainant and Respondent and other appropriate College officials to bring closure to the matter (see Retention of Documents section in this Policy).

If the matter is not resolved to the satisfaction of the parties utilizing the informal process, and/or the College determines the matter should be resolved through the formal process, the Complainant, the Respondent and/or the College may pursue the formal process. In such an instance, the Complainant, the Respondent, and/or the College may pursue the formal process within 5 business days of the date on the informal outcome letter.

### **Formal Resolution Process**

The College offers a formal process leading to resolution of a complaint if the conduct alleged would, if proven, constitute Sexual Harassment under the federal Title IX standard or other Sexual Misconduct under this Policy; if an informal resolution is not agreed upon or fails to satisfactorily resolve a concern; and/or if the College determines the formal process is appropriate or necessary.

### **Investigation**

The College will strive to complete a thorough, fair, impartial, and timely investigation. The Title IX Coordinator will appoint an investigator, who is normally a trained Department of Public Safety director, to conduct the investigation. The investigator appointed must be free of any conflict of interest and bias. The Complainant and the Respondent will be notified in writing of the investigator(s) assigned to their case. The investigator will conduct a fair and impartial investigation with the understanding that the burden of proof and the burden of gathering evidence adequate to reach a determination of responsibility rest on the College, not on the parties. The investigator may not have a conflict of interest or bias and will be trained, including on issues of relevance, to ensure the investigative report fairly summarizes the relevant evidence.

The investigator will require the Complainant or College representative making the complaint to complete Step 1. Steps 2-5 will follow.

### **Step 1: Complainant's Formal Complaint**

If the Complainant has not already submitted a Formal Complaint, then the Complainant will be asked to complete a written statement of the sexual

misconduct allegations as a Formal Complaint (defined and described above). The statement should be as specific as possible and, to the extent the information is available, including dates, times, locations, a description of the alleged misconduct and the name(s) of the Respondent(s). The Complainant should also provide a list of any person(s) who may have information that would be helpful to the investigation and hearing process. The Complainant will submit the above information to the investigator.

## **Step 2: College's Response and Investigation**

Once the Complainant has submitted the Formal Complaint, the investigator will likely meet with the Complainant to discuss his/her/their complaint and to ask any clarifying questions from the Complaint. During the meeting, the Complainant will have the right to have present an advisor, who may be an attorney, but the advisor will not be permitted to participate in any way in the meeting, except to advise the Complainant. The investigator will make sure that the Complainant has been adequately advised of available supportive measures (such as housing reassignments, security escorts, or class schedule changes) that are appropriate prior to a hearing on the Complaint. The investigator might need to speak with the Complainant more than once.

The investigator will then contact the Respondent to schedule a meeting to discuss the allegations. Within a reasonable period of time prior to the scheduled meeting time to discuss the allegations adequate to give the Respondent sufficient time to prepare a response, the investigator will provide the Respondent a written notice of the allegations, including the parties involved, the specific section of the Sexual Misconduct Policy or other parts of the student Code of Conduct alleged to be violated, the precise conduct that is alleged to constitute the potential violation, and the date and location of the alleged incident. This notice may be a copy of the Complainant's Complaint statement if it includes this necessary information. During the meeting with the Respondent, the investigator will ask questions and listen to his/her/their version of the incident. During the meeting, the Responding Party will have the right to have present an advisor, who may be an attorney, but the advisor will not be permitted to participate in any way in the meeting, except to advise the Respondent. The investigator might need to speak with the Respondent more than once.

## **Step 3: Respondent's Response**

The investigator will ask the Respondent to provide a written response to the allegations by a specified date or within a reasonable period of time necessary to keep the process moving forward. The Respondent will be asked also to provide a list of any person(s) who may have information that would be helpful to the investigation and hearing process. A copy or

summary of the response will be forwarded to the Complainant or the Title IX Coordinator bringing the complaint, as the case may be (with names and personally identifying information of other students redacted consistent with state and federal law).

#### **Step 4: Witness Statements and Other Evidence**

The investigator will collect any witness statements and other evidence he or she deems important to help assess whether sexual misconduct has occurred. Prior to concluding the investigation, the investigator will provide both parties an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, even if the College does not intend to rely on that evidence, and any inculpatory or exculpatory evidence so each party can meaningfully respond prior to the conclusion of the investigation.

#### **Step 5: Investigation Report**

Upon gathering all the relevant evidence and speaking with the parties and witnesses deemed relevant by the investigator, the investigator will prepare an investigation report to be reviewed by the Title IX Coordinator.

Prior to the finalizing the investigation report, the investigator must send each party and each party's advisor the evidence and provide at least 10 days for each party to submit a written response that the investigator will consider prior to completing the investigation. This evidence may be in electronic or hard copy.

After considering each party's response, if any, the investigator will prepare or finalize the investigator's final investigation report that fairly summarizes the evidence and send that to the Title IX Coordinator.

Upon receipt of the investigation report, and no fewer than 10 days prior to any hearing on the allegations, the Title IX Coordinator will then send the report to each party, each party's advisor, and to the appropriate person or persons who will conduct the hearing. The parties may review the report and all evidence, and may choose to provide a written response.

The College will make all evidence available for the parties' inspection and review at any hearing and give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination. Evidence will be handled consistent with state and federal law regarding disclosure of student and employee records.

## Dismissal of Complaints

The College has the right and, in some cases, the obligation, to dismiss a Formal Complaint, or some allegations within the Formal Complaint, as specified below. The College will distinguish between allegations of conduct that (a) would constitute sexual harassment under the federal Title IX standard and (b) would not constitute sexual harassment under the federal Title IX standard but would otherwise constitute misconduct under this Policy. Where a Complaint or specific allegations are dismissed because they would not constitute sexual harassment under the federal Title IX standard, the College may continue to move forward to determine whether the conduct otherwise violates this Policy. Even if the Complaint or specific allegations are dismissed, the College may elect to pursue a disciplinary process under other College policies and procedures, such as the Student Conduct Code, the Faculty Handbook, or the Staff Handbook.

A Complaint or specific allegations within the Complaint must be dismissed as to the federal Title IX standard where the conduct alleged:

- Would not meet the federal Title IX definition of sexual harassment, even if proved;
- Did not occur in the College's education program or activity;
- Did not occur at a location or event or in a circumstance over which the College exercised substantial control over both the Respondent and the context in which it occurred or at any building owned or controlled by an officially recognized student organization; or
- Did not occur in the United States (even if it occurred as part of a College program or activity).

Under the following circumstances, the College may choose to dismiss the Formal Complaint or any allegations within the Complaint.

- If the Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Complaint;
- If the Respondent is no longer enrolled or employed by the College;  
or
- If specific circumstance prevent the College from gathering sufficient evidence to make a determination.

In deciding whether to dismiss a Complaint or specific allegations, the College will consider the needs of the campus community, the safety of the parties involved, and the importance of making a determination of the facts.

As part of the dismissal process, the College must provide both parties written notice of the dismissal and the reasons for it. Either party may

appeal the dismissal by giving notice to the Title IX Coordinator within 5 days of receipt of the written notice of dismissal. The appeal of the dismissal will be decided as provided for under Appeals, below.

## **Hearing Processes**

The College will utilize a hearing process to determine whether the allegations of misconduct are true and whether the Respondent is responsible for misconduct under this Policy or under any other portion of the Student Conduct Code.

Where the allegations pertain to conduct which, if proven true, would meet the definition of Sexual Harassment under Title IX (as defined herein), the College will conduct a Live Hearing, as set forth below. If it is unclear whether the allegations pertain to Title IX-prohibited sexual harassment, then the College will use the Live Hearing process to determine responsibility.

Where the allegations pertain to conduct which, if proven true, would not meet the definition of Sexual Harassment under the federal Title IX standard (as defined herein), but would otherwise meet the definition of Sexual Misconduct in this Policy, then the College will conduct an Administrative Hearing, as set forth below, to determine responsibility.

### **Live Hearing (for Title IX Sexual Harassment Allegations)**

The function of this hearing is for an Adjudicator (see below for more details) to hear from the Complainant, the Respondent, and/or any other witness the Adjudicator deem[s] necessary to determine whether it is more likely than not that the Respondent is responsible for the misconduct alleged, whether the conduct violated the College's Sexual Misconduct Policy, including whether the conduct constitutes Sexual Harassment, and, if so, to determine an appropriate sanction. A respondent is not to be deemed responsible for the misconduct alleged until a final determination is made.

#### Adjudicator

The Adjudicator may be a single hearing officer or a panel of hearing officers. The Title IX Coordinator will designate one or more persons to conduct the hearing, and the persons may be employees of the College or those from outside the College, so long as all meet the requirements below. Anyone serving as an Adjudicator must be free from conflicts of interest or bias for or against complainants or respondents. All adjudicators will be trained in the conducting of fair hearings, in the terms of this Policy, and of issues involved in sexual misconduct, including victim trauma, of questioning, relevance, and any technology to be used in the live hearing.

Adjudicators must also received training as to what constitutes dating violence, domestic violence, sexual assault, and stalking under federal law and this Policy.

Hearing Procedure:

1. The Complainant and Respondent will be notified of the date, time and location of the hearing.
2. All hearings must be recorded or a transcript maintained.
3. The live hearing is closed and generally includes only the Complainant, the Respondent, the parties' Advisors, witnesses as they are providing testimony, and the Adjudicator, along with any other College officials needed to coordinate the hearing. The parties must attend the hearing live and, if not in the same room, be able to participate simultaneously. If the parties are in different rooms, the College must use technology that will allow the Adjudicator and parties to see and hear the party or witness providing information, simultaneously, and in real-time.
4. Both parties are allowed to have an advisor of their choosing for the hearing. For example, an employee of Ampersand or a parent could serve as an advisor). The advisor (for either party) may be an attorney, but the advisor is not allowed to participate in the hearing in any manner, except to cross-examine witnesses on behalf of the party they are advising. The advisor may consult with the person they are advising. If a party's advisor is an attorney, then the College may also have its attorney present. If a party decides to have an advisor present at the hearing, then the party must provide at least 48-hours' advance notice that the advisor will be present, along with the name of the advisor, and whether the advisor is also an attorney. The College will endeavor to inform the other parties if any of the parties is planning to include an advisor in the hearing.
5. The Complainant and Respondent may each submit a written statement concerning the alleged misconduct, the effect of the misconduct, and the appropriate sanction. The Adjudicator has discretion to limit the testimony or information offered if it is cumulative, irrelevant, or otherwise not helpful to the determination of responsibility or sanction (consistent with the provisions on Evidence, set forth below).
6. For any party or other witness to be allowed to offer a statement, that party or witness must agree to submit to cross-examination by one or both parties' advisors (see Rules Regarding Questions, below, for more details).
7. A party's or witness's decision to be absent from the hearing or refusal to answer any questions, including cross-examination,

may not be the sole basis for a determination regarding responsibility.

8. The parties' advisors may ask questions of and cross-examine witnesses (including the other party). All relevant questions and follow-up questions, including ones challenging credibility, must be permitted. Parties must not be required to submit questions in advance of the hearing.
9. Before a witness or a party answers a question, the decision-maker must decide if the question is relevant and explain any decision to exclude a question as not relevant. The explanation need not be more than the question is not probative of a material fact. Questions that are duplicative of other evidence in the record may be considered not relevant.
10. The Adjudicator may ask questions of the Complainant, of the Respondent, and of any other witnesses (except anyone who has not agreed to submit to cross-examination), and will consider the statements and any relevant information in the Investigation Report.
11. The Adjudicator will determine whether the Respondent has violated the College's Sexual Misconduct Policy. If there is a determination of violation, then the Adjudicator will also determine, after consultation with appropriate College personnel, an appropriate sanction(s) against the Respondent. The Adjudicator will also determine if any remedies are appropriate to provide to the Complainant following the hearing process.
12. After the hearing is concluded, the Respondent and Complainant will be informed in writing at the same time of the outcome and the rationale for the same. Both parties will receive notice of any sanctions imposed on the Respondent and any remedies provided to the Complainant. Also, any College administrators, faculty, or staff who require the information to carry out the sanction(s), will receive the appropriate information.

### Rules Regarding Questions for the Live Hearing

1. Sexual history: Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not considered relevant unless

- To prove someone other than the respondent committed the alleged conduct; or
- If concerning specific incidents of the Complainant's conduct with Respondent, intended to prove consent.

2. Medical records: Questions or evidence related to medical records must be excluded unless the party who is the subject of the medical record has consented to their submission in writing.
3. Questions may not be excluded by the Adjudicator on the basis that they are unduly prejudicial, seek character evidence, or concern prior bad acts.
4. Inability to Cross-Examine a Party or Witness: Statements by any witness or party who does not submit to cross-examination may not be considered as evidence.
  - This includes statements of the party appearing in the reports of others.
  - Even if a witness or party is unavailable due to death, illness or disability, the party's statement may not be considered if the party cannot be cross-examined.
  - No negative inferences may be drawn because an individual couldn't be cross-examined.

### Advisors

Parties are permitted advisors of their choice. The party choosing and advisor should provide the advisor's name and contact information to the Title IX Coordinator so the advisor can be provided appropriate notice of meeting and hearings. A party's advisor may attend all related meetings or hearings and, once the Title IX Coordinator is informed of the party's advisor's name and contact information, must receive the same notice as is given to the parties, as described throughout the process.

Parties may be required in advance to provide notice that the party's advisor will attend any meeting, interview or hearing.

If a party does not have an advisor at a hearing, the College will provide one at no cost to the party, at a minimum, to conduct cross-examination at the hearing. The College may appoint a member of the College community or a person from off-campus.

If a party doesn't want an advisor, the College will still make one available at the hearing and permit the advisor to conduct cross-examination on behalf of the party during the hearing.

The College may require advisors to agree to non-disclosure of FERPA protected records.

## **Administrative Hearing (for non-Title IX conduct)**

The function of this hearing is for a College Hearing Officer (see below for the identity of the hearing office) to hear from the Complainant, the Respondent, and/or any other witness the hearing officer deems necessary to determine whether it is more likely than not that the Respondent is responsible for the misconduct alleged, whether the conduct violated the College's Sexual Misconduct Policy, and, if so, to determine an appropriate sanction. Hearing officers will be trained in the conducting of fair hearings, in the terms of this Policy, and of issues involved in sexual misconduct, including victim trauma. The College Hearing Officer will receive a copy of the Investigation Report.

All administrative hearings will be conducted by the following College Hearing Officers:

- **Complaints against Students** will be heard by the Vice President and Dean of Student Life (or a designee). Please see below for the Hearing Procedure;
- **Complaints against Staff** will be heard by the Vice President for Human Resources and Administrative Services (or a designee). Please see the Staff Handbook for the Sexual Misconduct Hearing Procedure;
- **Complaints against Faculty** will be heard by the Vice-President for Academic Affairs (or a designee). Please see the Faculty Handbook for the Sexual Misconduct Hearing Procedure.

### Hearing Procedure:

1. The Complainant and Respondent will be notified of the date, time and location of the hearing.
2. The hearing is closed and generally includes only the Complainant, the Respondent, and the College Hearing Officer (the Hearing Officer may permit another College official to act as an observer of the proceedings, but not as a participant). The College Hearing Officer may meet with the parties together or separately, based on the circumstances. (The Complainant will not be required to attend a hearing with the Respondent, but may meet separately with the Hearing Officer or otherwise participate remotely.)
3. Both parties are allowed to have an advisor for the hearing (for example, an employee of Ampersand or a parent could serve as an advisor). The advisor (for either party) may be an attorney, but the advisor is not allowed to participate in the hearing in any manner. The advisor may attend and consult with the person

they are advising, but may not ask questions and/or otherwise engage in the process. If a party's attorney is present, then the College may also have an attorney present. If a party decides to have an advisor present at the hearing, then the party must provide at least 48-hours' advance notice that the advisor will be present, along with the name of the advisor, and whether the advisor is also an attorney. The College will endeavor to inform the other parties if any of the parties is planning to include an advisor in the hearing.

4. The Complainant and Respondent may each submit a written statement concerning the alleged misconduct, the effect of the misconduct, and the appropriate sanction. The College Hearing Officer has discretion to limit the testimony or information offered if it is cumulative, irrelevant, or otherwise not helpful to the determination of responsibility or sanction.
5. The College Hearing Officer may ask questions of the Complainant, of the Respondent, and of any other witnesses, and will consider the statements and any relevant information in the Investigation Report.
6. The College Hearing Officer will determine whether the Respondent has violated the College's Sexual Misconduct Policy. If there is a determination of violation, then the College Hearing Officer will also determine, after consultation with appropriate College personnel, an appropriate sanction(s) against the Respondent. The College Hearing Officer will also determine if any remedies are appropriate to provide to the Reporting Party following the hearing process.
7. After the hearing is concluded, the Respondent and Reporting Party will be informed in writing at the same time of the outcome and the rationale for the same. The sanction(s) will be communicated in writing to the Respondent, and any sanction(s) that directly relate to the Reporting Party will be communicated in writing to the Reporting Party. Also, any College administrators, faculty, or staff who require the information to carry out the sanction(s), will receive the appropriate information. The Reporting Party will also receive information on any remedies that are available to him/her/them.

## **Appeal Process**

The Respondent or the Complainant each may appeal the decision and/or sanction to the Sexual Misconduct Review Panel. Appeals are only available on the bases for appeal set forth below. Appeals must be submitted to the Title IX Coordinator within (5) five business days of receipt of the written decision and must specify the grounds for the appeal.

The grounds on which an appeal may be filed with the President are limited to the following:

1. New information not available to the hearing officer which, if available at the time of the hearing, may have affected the decision;
2. Evidence that established procedures were not followed in a manner that may have affected the decision;
3. Title IX Coordinator, investigator, or Adjudicator had a conflict of interest or bias that affected the outcome of the matter; or
4. The sanction was disproportionate for the violation.

Any appeal filed pursuant to this Policy shall be shared with the other party(ies) within 2 business days of the receipt of the appeal. The other party will have 5 business days to respond in writing, sending the response to the Title IX Coordinator.

The Sexual Misconduct Review Panel shall review the report and sanctions to be imposed, and may review any documents, materials, or statements obtained during the investigation or presented during the hearing. In addition, the Panel shall review the appeal document and any response received from the non-appealing party(ies).

The Panel may accept, reject, or modify the finding and/or sanctions based on one or more of the four, above-listed grounds for appeal. The Panel must issue a written decision simultaneously to both parties describing the result and the rationale for the result.

The Panel will, under normal circumstances, make a final decision on the appeal within 10 business days of receiving the timely-filed appeal and timely-filed responses. The Panel will communicate the decision, in writing, to the Title IX Coordinator, who will forward the decision to the Respondent, the Complainant, and the Adjudicator/College Hearing Officer who conducted the underlying hearing in the case.

The Title IX Coordinator shall forward the Panel's decision to the Respondent's department chair, dean/supervisor, and appropriate vice president(s).

The Panel's decision shall be final.

### **Disciplinary Action**

Should disciplinary action be required, it will be taken by the following College officials, after consultation with appropriate Centre personnel:

- **Students:** Disciplinary action will be taken by the Vice President and Dean of Student Life.
- **Staff:** Disciplinary action will be taken by the supervisor and Vice President of Human Resources and Administrative Services.
- **Faculty:** Disciplinary action will be taken by the Vice President for Academic Affairs.

## Sanctions

The sanctions available under these processes are intended to reflect the facts and circumstances of a particular case as best they can be determined. Sanctions also are premised on the College's role as an educational institution. Sanctions may be issued individually, or a combination of sanctions may be imposed. The determination of sanctions is based upon a number of factors, including: the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by the Respondent; the impact of the violation on the community, its members, or its property; any previous conduct violations; and any mitigating or aggravating circumstances.

Depending upon the severity of the misconduct and other factors pertinent to the situation and the parties involved, for a student, the sanctions range as follows (as provided in the Student Handbook):

1. Warning—A notice in writing to the student that the student is violating or has violated institutional regulations.
2. Probation—A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.
3. Loss of Privileges—Denial of specified privileges for a designated period of time.
4. Fines—Previously established and published fines may be imposed.
5. Restitution—Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
6. Discretionary Sanctions—Work assignments, essays, service to the college, or other related discretionary assignments.
7. Residence Hall Relocation—Relocation of the student from one room or residence hall to another room or residence hall either for a definite period of time, or indefinitely.
8. Residence Hall Suspension—Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

9. Residence Hall Expulsion—Permanent separation of the student from the residence halls.
10. College Suspension—Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
11. College Expulsion—Permanent separation of the student from the college.

In addition, the sanctions could include a requirement of counseling or education. For faculty and staff, the sanctions range from a warning to termination of appointment/employment, and could include a requirement of counseling or education.

### **Final Report**

Upon completion of a sexual misconduct investigation, the file containing all documentation relating to the complaint will be maintained in the Human Resources Department in a separate confidential file for seven years.

The file shall contain records pertaining to the following, as applicable:

- The written determination of responsibility;
- The audio or audio visual recording or transcript of the hearing;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant;
- Any appeal and its outcome;
- Any informal resolution and its outcome;
- Any records of actions taken in response to any Formal Complaints, including requests for supportive measures and the College's conclusion that its response was not deliberately indifferent plus documentation of action designed to restore or preserve the Complainant's equal access;
- If the College did not provide the Complainant's requested supportive measures, the reasons why the College's response was not clearly unreasonable under the known circumstances.

A copy/copies of the final outcome or determination letter from any formal disciplinary action will be maintained in accordance to the following guidelines:

- **Students:** In the Student's file, maintained by the Vice President and Dean of Student Life.
- **Staff:** In the Staff member's personnel file, maintained in the Human Resources Department.

- **Faculty:** In the Faculty member's personnel file, maintained in the Human Resources Department, and within the office of the Vice President of Academic Affairs.

As required by law, Centre College Department of Public Safety collects and annually reports statistical information concerning sexual misconduct that occurs within its jurisdiction.

## **VI. Sexual Misconduct Policy Definitions**

### **Complainant**

The individual who is alleged to be the victim of conduct that could constitute sexual harassment or other sexual misconduct under this Policy.

### **Respondent**

The individual(s) who has been reported to be the perpetrator of conduct that could constitute sexual harassment or other sexual misconduct under this Policy. A group or an organization may not be considered as a respondent. Formal complaints against more than one respondent may be consolidated where the allegations arise out of the same facts or circumstances. However, if complaints are consolidated, each respondent must be considered as an individual.

### **Sexual Misconduct**

Conduct based on an individual's sex that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of, an individual's employment, education, living environment or participation in a program or activity. Sexual misconduct encompasses all forms of sexual harassment, differential treatment based on sex, and gender-based harassment. Sexual misconduct also includes the threat or the commission of behavior used to obtain sexual gratification against another's will or at the expense of another such as inducing fear, shame, or mental suffering. Sexual misconduct includes unwanted sexual acts or actions, whether by an acquaintance, a person in the position of authority, or a stranger that occurs without indication of consent of both individuals or under threat or coercion. Sexual misconduct can occur either forcibly and/or against a person's will, or when a person is incapable of giving consent.

## **Sexual Harassment**

The College prohibits sexual harassment. Harassment on the basis of sex is a form of sexual misconduct. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a requirement of employment or participation in a College program or activity, (2) submission to or rejection of such conduct by an individual is used as the basis for employment or other College decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, academic, or campus environment.

The College recognizes two types of sexual harassment: *quid pro quo* (something for something) and hostile environment misconduct. *Quid pro quo harassment* occurs where sexual activity is demanded in exchange for an actual, tangible job or academic benefit. *Hostile environment harassment* exists where the conduct creates an environment that may impair another individual's academic or professional performance, or hinder his/her/their ability to function within the community.

Sexual harassment that constitutes conduct prohibited under the federal Title IX statute includes *quid pro quo* sexual harassment; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Examples of sexual harassment that are not, unless they also satisfy the above standard for Title IX, included within the federal Title IX standard but are prohibited by this Policy include, but are not limited to: sexual exploitation; relationship intimidation; sexually-charged name calling; retaliation against someone who reports sexual harassment; and use of language or the presentation of posters/banners and/or t-shirts that promotes the diminishing of a particular sex or gender.

## **Sexual Assault**

The College prohibits sexual assault. Sexual assault, a form of sexual misconduct, refers to physical acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. Rape, sexual battery, and sexual coercion are all acts of sexual assault. Examples include, but are not limited to:

- Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
- Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.

### **Sexual Abuse**

Sexual abuse refers to two broad types of sexual misconduct by employees and others who are affiliated with the College but are not students.

Specifically, sexual abuse means: (1) serial sexual misconduct or (2) child molestation. Serial sexual misconduct means any actual or alleged illegal or otherwise sexual misconduct that has more than one victim and is committed by, or alleged to have been committed by, faculty staff, or volunteers affiliated with the College. Child molestation means actual or alleged illegal or other sexual misconduct with a minor.

### **Consent**

Consent for sexual activity is based on the mutual understanding and respect of all people involved for the desires and wishes of their partner(s). In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Consent is sexual permission. Consent:

- Is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested an understandable agreement between them to do the same thing, in the same way, at the same time and with one another;
- Is not merely the absence of a verbally stated “no”, silence without actions demonstrating permission, cannot be assumed to show consent;
- Is never final or irrevocable;
- Is time-limited and situation-specific; even if someone obtained consent from a partner(s) in the past, this does not mean that consent is automatically granted again;
- Can only be given by someone who is free from verbal or physical pressure, coercion, intimidation, threat, or force; and
- Can only be given by someone in an unimpaired state of mind who is able to understand what is happening.

Consent is not valid if the person from whom consent is sought is impaired by the use of alcohol or drugs, is asleep, passed out, or unconscious. There is not consent when:

- A person is forced to submit through use of forcible compulsion.
- A person does not expressly or implicitly acquiesce in the other party's conduct under circumstances other than forcible compulsion or incapacity to consent.
- A person is deemed to be incapable of consenting because he/she/they is/are less than 16 years old, has an intellectual or other disability that prevents them from having the capacity to give consent, or is physically helpless.
- A person is incapable of giving consent if the person is under the age of 18 and the other person is at least 10 years older at the time of the sexual activity.
- A person is mentally incapacitated or physically helpless due to the influence of any intoxicating substance.
- A person is unconscious or for any other reason is physically unable to knowingly communicate unwillingness to act.

The use of alcohol or drugs does not minimize or excuse a person's behavior or responsibility for committing sexual misconduct. If you were assaulted while under the influence of alcohol or other drugs, your intoxicated state does not excuse the behavior of your attacker.

### **Incapacitation**

Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the: who, what, when, where, why or how of their sexual interaction. Sexual activity with someone one knows to be, or should know to be, mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, sleep, blackout, or any other means) is an act of sexual misconduct.

### **Capability to Give Consent**

An objective standard will be used in determining whether a person is incapable of giving consent due to the person's use or consumption of drugs or alcohol, or if a physical or mental condition as described above is present. That is, consent is not valid when:

(a) From the standpoint of a reasonable person, the Respondent knew, or reasonably should have known, that the other person was incapable of giving consent due to the person's use or consumption of drugs or alcohol, or that the person's physical or mental condition would prevent knowing

and voluntary consent; or (b) The person was, in fact, incapable of giving consent due to the person's use or consumption of drugs or alcohol, or the person was incapable of providing knowing or voluntary consent due to a physical or mental condition.

### **Domestic Violence**

A felony or misdemeanor crime of violence committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under applicable domestic or family violence laws.

### **Dating Violence**

Violence committed by a person who is or has been in a social relationship or intimate nature with the victim. The existence of such a relationship will be determined based on consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **Stalking**

The College prohibits stalking. Stalking is defined as a course of conduct involving more than one instance of unwanted attention, misconduct, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

### **Sexual Exploitation**

The College prohibits sexual exploitation. Sexual exploitation happens when:

- a person takes non-consensual, unjust, or abusive advantage of another either for his/her own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited; and

- that behavior does not otherwise constitute one of the other defined sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly transmitting an STD or HIV/AIDS without informing the other person of such infection.

### **Bullying**

The College prohibits bullying and cyberbullying. Bullying or cyberbullying is harassing conduct that may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Bullying or cyberbullying creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a person's ability to participate in or benefit from the services, activities, or opportunities offered by the College. When such harassment is based on gender, sexual orientation, or perceived gender or sexual orientation, it is considered sexual misconduct.

### **Retaliation**

It is a violation of this Policy to act or attempt to retaliate, intimidate, or seek retribution against anyone involved in or connected to reporting a concern, the investigation of, and/or the resolution of a sexual misconduct allegation. Individuals who refuse to participate in the processes described under this Policy are also protected against retaliation for their decision. Retaliation also includes filing charges against a person for conduct that arises out of the same facts and circumstances, but does not involve sex discrimination or sexual harassment, for the purpose of interfering with any right or privilege. Retaliation against an individual for the purpose of interfering with any right or privilege secured by Title IX is also unlawful.

The College recognizes that retaliation can take many forms, may be committed by an individual or a group against an individual or a group, and that the Respondent can also be the subject of retaliation by the Complainant or a third party. Complaints alleging retaliation shall be filed using this process. The College will take immediate and responsive action to any report of retaliation and may pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any

form of retaliation following a report that is made in good faith, even if the report is later not proven.

### **Responsible Employees**

Employees who are required to report any alleged sexual misconduct incidents to the Title IX Coordinator, but the College has not conferred upon them authority to take corrective action to end the discrimination or to redress the sexual harassment. The following are Responsible Employees under this Policy: The President of the College and all members of Senior Staff; all Public Safety employees, the Office of Student Life (including Resident Assistants and Residence Directors), the Athletics Department, the Human Resources Office, and all Faculty.