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# Bay Mills Community College Sexual Misconduct Policy

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2015

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## I. Introduction: Notice of Non-Discrimination and Institutional Values

- A. **NOTICE OF NON-DISCRIMINATION:** The Bay Mills Community College (BMCC) and its Board of Regents is committed to providing a non-discriminatory and harassment-free educational and working environment for all members of the Bay Mills Community College, including students, faculty, administrators, staff, and visitors. It is the policy of Bay Mills Community College that no person shall be discriminated against, excluded from participation in, denied the benefits of or otherwise be subjected to discrimination, including harassment, in employment, in admissions, in education, or in any program or activity for which the College is responsible, on the basis of race, color, national origin, ancestry, gender, gender identification, sexual orientation, disability, age, religion, disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or tribal or federal law.
- B. Bay Mills Community College, as a recipient of federal funds, is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. §1681 et seq. ("Title IX"), which prohibits discrimination on the basis of gender in educational programs or activities. Bay Mills Community College does not discriminate on the basis of gender in its educational programs or activities, including in the context of admissions and employment. This policy prohibits all forms of sexual or gender-based discrimination, harassment, or misconduct, including sexual violence, sexual assault, stalking, and intimate partner violence. Misconduct of this nature is contrary to Bay Mills Community College's institutional values and prohibited by state, tribal and federal law. All Bay Mills Community College staff, students, visitors and third parties are expected to conduct themselves in a manner that does not infringe upon the rights of others. Any individual who is found to have violated this policy may face disciplinary sanctions up to and including expulsion from the College or termination of employment.
- C. The Bay Mills Community College has appointed a Title IX Coordinator who will address all complaints pertaining to discrimination of any sort. All Bay Mills Community College staff and students are strongly encouraged to report information regarding any incident of sexual discrimination, sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator. The following person has been designated to address complaints regarding all matters of discrimination:

Holly Powless  
Title IX Coordinator  
12140 W. Lakeshore Drive  
Brimley, MI 49715

(906) 248-8123  
[hpowless@bmcc.edu](mailto:hpowless@bmcc.edu)

- D. This policy has been developed to reaffirm Bay Mills Community College's institutional values, to define community expectations, to provide recourse for those individuals whose rights have been violated, and to provide for fair and equitable procedures for determining when this policy has been violated. The College is committed to fostering a climate free from sexual harassment, sexual violence, and intimate partner violence through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of complaints.

## II. Scope of Policy

- A. This policy applies to all persons associated with the Bay Mills Community College community, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property.
- B. This policy is intended to protect and guide individuals who have been affected by sexual discrimination, sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of such reports.
- C. When used in this policy, Complainant refers to the individual who identifies him/herself as being a victim or survivor of sexual discrimination, sexual harassment, sexual violence, stalking, or intimate partner violence. A Respondent refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.
- D. This policy applies to conduct occurring on all College property or at College-sanctioned events or programs that take place off campus, including internship programs. In situations in which both the Complainant and Respondent are members of the College community, this policy will apply regardless of the location of the incident. In particular, off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any employee or student of the College community or Bay Mills Community College is covered under this policy.
- E. A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if the College does not have

jurisdiction over the Respondent, the College will nonetheless take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

### **III. The Title IX Coordinator**

#### **A. The Responsibilities of the Title IX Coordinator are:**

- (1) To oversee of the investigation and resolution of all reports of sexual harassment, sexual violence and intimate partner violence involving students, staff, administrators, faculty, vendors, and visitors;
- (2) To be assisted by designated Deputy Title IX Coordinator(s) in student affairs, human resources, and the faculty as detailed in this policy. These Deputy Title IX Coordinator(s) have a shared responsibility for supporting the Title IX Coordinator and are accessible to any member of the community for consultation and guidance;
- (3) To be knowledgeable and trained in College policies and procedures and relevant state, tribal, and federal laws;
- (4) To be available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and in the Bay Mills Community College community;
- (5) To be available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, stalking or intimate partner violence;
  - i. To monitor for full compliance with all procedural requirements and time frames outlined in this policy; and
  - ii. To train and inform College community members in prevention and education efforts and periodic reviews of climate and culture of the College.

**B.** The Title IX Coordinator is supported by the Title IX team. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinator(s), and the College General Counsel. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the President of the College and a representative from the Office of Human Resources. Composition of the team will be limited to a small circle of individuals who “need to know” in order to implement procedures under this policy.

#### IV. Privacy vs. Confidentiality

- A. The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking, or intimate partner violence. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator, investigators, and hearing panel members, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.
- B. Privacy and confidentiality have distinct meanings under this policy.
- (1) **Privacy:** Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.
  - (2) **Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.
  - (3) An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.
  - (4) An individual may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA).
  - (5) **Responsible Employees:** In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-

based harassment that creates a hostile environment. A “responsible employee” includes any employee who:

- (1) Has the authority to take action to redress the harassment;
- (2) Has the duty to report to appropriate school officials’ sexual harassment or any other misconduct by students or employees; or
- (3) A student could reasonably believe has the authority or responsibility to take action.
- (4) Using this definition, employees with supervisory and leadership responsibilities on campus are considered “responsible employees.” This includes, for example, all faculty, staff, and administrators.
- (5) The College requires that all “responsible employees” share a report of misconduct with the Title IX Coordinator or a member of the Title IX team.
- (6) The Title IX team, under the guidance of the Title IX Coordinator, will immediately conduct an initial assessment of the conduct, the Complainant’s expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

C. Request for Confidentiality: Where a Complainant requests that his/her name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

D. The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a

Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

- E. **Timely Warning:** If a report of misconduct discloses a serious or continuing threat to the Bay Mills Community College, the College may issue a campus wide timely warning via email to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant. Even where there is no imminent threat, the College may send campus-wide e-mail notifications on all reported sexual misconduct.
- F. At no time will the College release the name of the Complainant to the general public without the express consent of the Complainant. The release of the Respondent's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.
- G. All College proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and state, tribal and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

## **V. Prohibited Conduct and Definitions**

- A. The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. The College will treat attempts to commit any prohibited conduct as if those attempts had been completed. The following forms of conduct fall under the broad definition of sexual harassment, and are specifically prohibited under this policy.
- B. **Sexual Harassment-** Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:
  - (1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity; or,
  - (2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or



- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.
- (4) **Single Incident:** A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.
- (5) **Gender Bases Harassment:** Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.
- (6) **Blatant or Indirect:** Sexual Harassment may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated. For example, sexual harassment:
  - i. Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
  - ii. May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
  - iii. May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
  - iv. May be committed by or against an individual or may be a result of the actions of an organization or group.
  - v. May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
  - vi. May occur in the classroom, in the workplace, in residential settings, or in any other setting.
  - vii. May be a one-time event or can be part of a pattern of behavior.
  - viii. May be committed in the presence of others or when the parties are alone.

- ix. May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.
- (7) Pattern of behavior: Examples of conduct that may constitute sexual harassment, as defined above, may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:
- i. Physical conduct:
    - a. Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements.
    - b. Unwanted sexual advances within the employment context.
    - c. Verbal conduct.
    - d. Making or using derogatory comments, epithets, slurs or humor.
    - e. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations.
    - f. Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes.
    - g. Cyberbullying and Online Conduct: Online and/or social media conduct may also violate this policy if the conduct meets the definition of any form of the above prohibited conduct. Blogs, web page entries on sites such as Instagram, Facebook, and Twitter and other similar online postings are in the public sphere and are not private. Therefore, these postings can be subject to allegations of conduct violations. The College does not regularly search for information but may take action if and when such information is brought to the attention of College officials.
  - ii. Visual conduct:
    - a. Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum.

- b. Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate.
    - c. Written conduct: letters, notes or electronic communications containing comments, words, or images described above.
  - iii. Quid pro quo conduct:
    - a. Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
    - b. Offering employment benefits in exchange for sexual favors
    - c. Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
    - d. Making or threatening reprisals after a negative response to sexual advances
- (8) Sexual Assault: Having or attempting to have sexual intercourse with another individual:
  - i. By force or threat of force;
  - ii. Without effective consent; or
  - iii. Where that individual is incapacitated.
  - iv. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.
  - v. This definition tracks the FBI's Uniform Crime Report definition of rape: "the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Under many state laws, including California, however, rape definitions differ in that they require proof of an element of force or threat of force. Our definition incorporates both.

- (9) Non-Consensual Sexual Contact: Having sexual contact with another individual:
- i. By force or threat of force;
  - ii. Without effective consent; or
  - iii. Where that individual is incapacitated.
  - iv. Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.
- (10) Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

Examples of sexual exploitation include, but are not limited to:

- i. surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
  - ii. non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
  - iii. exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
  - iv. knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;
  - v. sexually-based stalking and/or bullying; and
  - vi. inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- (11) Harm to Others: Words or types of conduct that threaten or endanger the health or safety of any person including physical abuse, verbal abuse, threats, intimidation and/or harassment. This behavior is typically treated as a violation of Bay Mills Community College's Code of Student Conduct.

Acts which constitute harm to others that are a form of intimate partner violence, or are based on sex or gender, will be resolved under this Sexual Harassment and Assault Policy.

- (12) Stalking: A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking 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 to make unwelcome contact with another person in an unsolicited fashion.
- (13) Intimate Partner Violence: Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The College will not tolerate intimate partner violence of any form. For the purposes of this policy, the College does not define intimate partner violence as a distinct form of misconduct. Rather, the College recognizes that sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

Under the Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

- (14) Retaliation: Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

## VI. Reporting

- A. The College encourages all individuals to make a report regarding sexual harassment and/or assault to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously. Sexual harassment and assault are prohibited by Title IX and applicable criminal laws. By reporting to the College, the College can take steps to protect the Complainant and address the situation.
- B. The College has a strong interest in supporting victims and survivors of sexual harassment, sexual violence, stalking, and intimate partner violence and encourages all individuals or third party witnesses to report any incident to the College.
- C. Making a report means telling someone in authority what happened -- in person, by telephone, in writing or by email. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.
- D. Any individual who reports sexual harassment, sexual violence, stalking or intimate partner violence can be assured that all reports will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the College will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will

take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

#### E. Emergency and External Reporting Options

- (1) The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual assault or violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The College will help any member of the Bay Mills Community College community to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

#### F. Campus Reporting Options

- (1) The College encourages all individuals to report misconduct to any College employee the Complainant trusts and feels comfortable with.
- (2) All Bay Mills Community College staff and students, even those who are not obligated to do so by this policy, shall report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident is reported to the College.
- (3) Campus Reporting Options include:
  - i. For emergencies dial 9-1-1 or call the Bay Mills Police Department (BMPD) at 248-3244. Any student, administrator, faculty member or other employee of BMCC who witnesses or is a victim of any sex related offense, including any such offense involving a child, is requested to immediately report such incident to BMPD, or dial 9-1-1 and request assistance.
  - ii. The Title IX Coordinator Holly Powless is available on weekdays, during regular office hours, to coordinate a fair and equitable response to reports of sexual misconduct and is located at the BMIC Tribal Office Building at 12140 W. Lakeshore Drive, Brimley, MI 49715, [Hpowless@bmcc.edu](mailto:Hpowless@bmcc.edu), (906) 248-8123.

- iii. Wade Teeple, Off Campus and Non-Credit Program Coordinator/Cashier, is located in the Administration Building, near the Financial Aid Office – 248-8421.
- G. A victim of sexual assault is also encouraged to use the services of the Bay Mills Journey to Healing Program, whose telephone number is 248-8312.
- H. A secondary method of reporting sexual harassment incidents or crimes is to contact college administration, which include, but are not limited to:
- i. Mickey Parish, President (906-248-8400)
  - ii. Samantha Cameron, Vice President for Academic Affairs (906-248-8429)
  - iii. Kathy Adair, Director of Development (906-248-8404)
  - iv. Debra Wilson, Dean of Student Services (906-248-8442)
  - v. Kelly Bedell, Student Support Services Specialist (906-248-8432)
  - vi. Diane Sliger, TRiO-SSS Director (906-248-8476)
- I. Anonymous Reporting
- (1) Any individual may make an anonymous report concerning an act of sexual harassment, sexual violence, stalking, or intimate partner violence. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited.
  - (2) The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Campus Safety, and in compliance with all Clery Act obligations.
- J. Reporting Considerations: Timeliness and Location of Incident
- (1) Complainants and third-party witnesses are encouraged to report sexual harassment, sexual violence and intimate partner violence as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Bay Mills Community College community, the College will still seek to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited.



- (2) An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Bay Mills Community College community may also be addressed under this policy.

B. Amnesty for Alcohol or Other Drug Use

- (1) The college community encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many Complainants as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual harassment or misconduct, either as a Complainant or a third-party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

C. Coordination with Law Enforcement

- (1) The College encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under federal or tribal law. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.
- (2) The College's policy, definitions and burden of proof may differ from Federal or Tribal criminal law. A Complainant may both seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.
- (3) At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the

implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation.

#### D. Statement against Retaliation

- (1) It is a violation of College policy to retaliate in any way against an individual because s/he raised allegations of sexual harassment, sexual violence, stalking, or intimate partner violence. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation.
- (2) The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual harassment or 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.

#### E. False Reports

- (1) The College will not tolerate intentional false reporting of incidents. The College takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence, stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate tribal, federal, or state criminal statutes and civil defamation laws.

## VII. Interim Measures, Remedies and Accommodations

### A. Overview

- (1) Upon receipt of a report, the College will impose reasonable and appropriate interim measures designed to eliminate the hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all

safety, emotional and physical well-being concerns are being addressed. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College.

- (2) A Complainant or Respondent may request a No-Contact Letter or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

## **B. Range of Measures**

Interim measures will be implemented at the discretion of the College. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- (1) Access to counseling services and assistance in setting up initial appointment, both on and off campus
- (2) Imposition of campus "Stay-Away Letter"
- (3) Rescheduling of exams and assignments (in conjunction with appropriate faculty)
- (4) Providing alternative course completion options (with the agreement of the appropriate faculty)
- (5) Change in class schedule, including the ability to take an "incomplete," drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)
- (6) Change in work schedule or job assignment
- (7) Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter
- (8) Voluntary leave of absence
- (9) Providing an escort to ensure safe movement between classes and activities
- (10) Providing referrals to medical services
- (11) Providing academic support services, such as tutoring
- (12) Interim suspension or College-imposed leave
- (13) Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

## **C. Interim Suspension or Separation**

- (1) Where the report of sexual harassment, sexual violence, stalking or intimate partner violence poses a substantial and immediate threat of harm to the

safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

- (2) The full provisions for Interim Suspension for students are contained in the Code of Student Conduct. Provisions for suspension of faculty members are contained in the Faculty Handbook. Staff may be placed on leave at the discretion of the College.

## **VIII. Options for Resolution**

### **A. Overview**

- (1) Upon receipt of a report, the College's Title IX team will conduct an Initial Title IX Assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment or misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution.
- (2) At the conclusion of the assessment, the College may choose to pursue Informal Resolution, a remedies-based approach that does not involve disciplinary action against a Respondent, or refer the matter for Investigation. The goal of the Investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to a hearing panel for disciplinary action using the College's Formal Resolution procedures as set forth in this Policy.
- (3) The initial steps for resolution of a complaint against a student, an employee or a faculty member will involve the same stages: an initial assessment, investigation, and either informal or formal resolution. There are specific procedures for resolving complaints against a student, faculty or staff respondent.

### **B. The Role of the Title IX Team**

- (1) The Title IX team, led by the Title IX Coordinator, assists in the review, investigation and resolution of reports. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinator(s), and

the Campus Safety Representative. In addition, based on the role of the Complainant and the Respondent, the members of the team could include any member of the College's Administration. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

- (2) If there is a conflict of interest between any team member and any Complainant and/or Respondent, the College reserves the right to appoint an alternate person to serve in their capacity. It is the responsibility of the team member to inform the College of such conflict in writing, if such a conflict exists. If there is a doubt as to a potential conflict, the team member is encouraged to submit the potential conflict in writing and let the College administration determine if a conflict does exist.
- (3) Although a report may be made to any College employee, the College seeks to ensure that all reports are referred to the Title IX team to ensure consistent application of the policy to all individuals and allow the College to respond promptly and equitably to eliminate the harassment, prevent its recurrence and address its effects.
- (4) The members of this team oversee the resolution of a report under this policy. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of the complaint. Interim Remedies are also available to provide protection and security.

#### C. Initial Title IX Assessment

- (1) In every report of sexual harassment or misconduct, the College will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.
- (2) The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, the investigation may be initiated depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

#### D. Investigation

- (1) Where the Title IX assessment concludes that disciplinary action may be appropriate, the College will initiate an investigation. The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.
- (2) The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence.
- (3) The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.
- (4) The College will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case. At the conclusion of the investigation, the report will be forwarded to the Title IX Coordinator and the Hearing Coordinator responsible for initiating Formal Resolution proceedings.
- (5) Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the College campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, the College will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

- (6) Based on the information gathered in the initial Title IX assessment and/or full investigation, the College will take appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.
- (7) The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

### **E. Informal Resolution**

- (1) Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.
- (2) The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, shall not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.
- (3) The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

### **F. Formal Resolution**

- (1) Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply

when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness, due process, and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

- (2) The specific procedures for Formal Resolution will vary based upon the role of the Respondent:
  - i. For a complaint against a student, disciplinary action may be taken by the College President or his/her designee following a finding of responsibility by an Administrator or a Hearing Panel.
  - ii. For a complaint against a staff member or employee, disciplinary action may be taken at the conclusion of the investigation by the Director of Human Resources or the College President or his/her designee.
  - iii. For a complaint against a faculty or administrator, disciplinary action may be taken at the conclusion of the investigation by the College President or his/her designee pursuant to the procedures in the Faculty Handbook.

### **G. Time Frame for Resolution**

- (1) The College seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.
- (2) In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

## **Appendix A: Resolving Complaints Against a Student**



## I. Overview

- A. As outlined in the Reporting section of this policy, an individual who wishes to make a report of sexual harassment, sexual violence, stalking, or intimate partner violence is encouraged to make a report directly to the Title IX Coordinator, the Administration and/or staff, Campus Safety or Human Resources. In every instance under this policy, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.
- B. At the conclusion of the Title IX Assessment, the report will be referred for Informal Resolution or Investigation to determine if there is sufficient information to proceed with Formal Resolution. Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion.

## II. Initial Title IX Assessment

- A. Upon receipt of a report, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting with the Complainant with the Title IX Coordinator or a member of the Title IX team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and interim remedies.
- B. As part of the initial assessment of the report, the Title IX team will:
  - (1) Assess the nature and circumstances of the allegation
  - (2) Address immediate physical safety and emotional well-being needs
  - (3) Notify the Complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence
  - (4) Enter the report into the College's daily crime log
  - (5) Assess the reported conduct for the need for a timely warning under the Clery Act
  - (6) Provide the Complainant with information about:
    - i. On and off campus resources
    - ii. The range of interim accommodations and remedies
    - iii. An explanation of the procedural options, including Informal Resolution and Formal Resolution

- iv. Make available an advisor, advocate, or support person
  - v. Assess for pattern evidence or other similar conduct by Respondent
  - vi. Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding
  - vii. Explain the College's policy prohibiting retaliation
- C. This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may continue depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.
- D. At the conclusion of the Title IX assessment, the Title IX team will determine the appropriate manner of resolution and, if appropriate, refer the report for further Investigation, Informal Resolution or Formal Resolution.
- E. The determination as to how to proceed will be communicated to the Complainant in writing. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the College seeks action that would impact a Respondent, such as protective measures that restrict his/her movement on campus, the initiation of an investigation or the decision to involve the Respondent in Informal Resolution.

### **III. Informal Resolution**

- A. Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent.
- B. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

- C. The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.
- D. The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

#### **IV. Investigation**

- A. Following the initial Title IX assessment, the College may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation. At the conclusion of the investigation, if warranted, a Hearing Coordinator will be assigned to facilitate the adjudication through a conduct conference or specially trained conduct hearing panel.
- B. The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.
- C. The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.
- D. The investigator(s) will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator(s) may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information.

- E. The investigation will usually be completed within twenty (20) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.
- F. At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as law enforcement has completed its initial investigation.
- G. Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report.

## **V. Threshold Determination and Appeal from Insufficient Threshold**

- A. At the conclusion of the investigation, the investigator(s) will prepare a written report synthesizing the facts for review by the Title IX Coordinator and a Hearing Coordinator. The investigator(s) are not charged with reaching a determination as to responsibility, which is a function reserved for the Conduct Conference or Hearing Panel.
- B. Upon receipt of the investigative report, the Hearing Coordinator, in consultation with the Title IX team, will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has been established, the Hearing Coordinator will issue a Notification Letter to the Respondent and the Complainant and refer the report for Pre-Hearing Procedures.
- C. If the Title IX Coordinator, in consultation with the Title IX team, determines that this threshold has not been reached, the Complainant and Respondent will be notified in writing. The Complainant will have the opportunity to seek review by the Title IX Team (or designee) by submitting a written request for review within five (5) business days of receipt of the notification. If an appeal is filed, the Respondent will be notified and have the opportunity to respond. The Title IX Team (or designee) may affirm the threshold finding, reverse the finding or remand the matter for additional investigation as warranted. The Title IX Team (or designee) will render a decision in writing, to both parties, within ten (10) business days of receipt of the request for review. The decision of the Title IX Team (or designee) is final. Where a designee is chosen, the identity of this individual will be shared with both parties.

## VI. Formal Resolution

A. Formal resolution of a complaint under the Sexual Harassment and Assault Policy will occur through the use of a Conduct Conference or a Hearing Panel.

### B. Conduct Conference

- (1) A Complainant or Respondent may request resolution through an administrative conduct conference, in which the Hearing Coordinator will meet with the Complainant and Respondent to determine responsibility and render a decision as to what sanctions, if applicable, should be implemented. Both parties and the Hearing Coordinator must agree that the matter is appropriate for resolution by a conduct conference. Depending upon the nature and severity of the allegations, the Hearing Coordinator may decline to handle the matter administratively and refer the case to a Hearing Panel.
- (2) A conduct conference is particularly appropriate when the Respondent has admitted to the harassment or misconduct and there is no discernible dispute in the relevant facts of the investigation report; however, at the discretion of the Hearing Coordinator, it may also be used when the facts are in dispute. The investigative report will serve as the primary evidence in making a determination of responsibility.
- (3) Both parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present any additional relevant information to the Hearing Coordinator. In reaching a determination as to whether this policy has been violated, the Hearing Coordinator will reach a determination by a preponderance of the evidence, that is, whether the conduct was more likely than not to have occurred as alleged. Based on the outcome of the conduct conference, the Hearing Coordinator will issue an appropriate sanction.
- (4) Both a Complainant and Respondent may appeal the determination of the Hearing Coordinator as provided in the Appeal section below.

C. **Hearing Panel**-The hearing panel shall consist of at least 3 of the following members:

- (1) Hearing Chairperson- The Dean of Student Services.
- (2) One full-time faculty member
- (3) One Student Council officer
- (4) Another administrator not chairing the committee.

D. The Hearing Chairperson will select two committee members, establish a hearing date, notify the student of the hearing date, and conduct the hearing.

- (1) It is the responsibility of the Hearing Chairperson to select and notify the members of the committee and to inform the involved student of the date and time of the hearing.
- (2) If the Hearing Chairperson is unable to preside over a hearing, the BMCC President shall appoint an alternate Hearing Chairperson.
  - i. All hearing panelists must participate in annual training on non-discrimination; the dynamics of sexual harassment, sexual violence and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.
  - ii. The Hearing Panel is supported by the Hearing Coordinator, who is present at hearing panel meetings, but is not be a voting member of the panel. He or she will meet with all involved parties prior to the hearing, be present during the hearing to serve as a resource for the hearing panel on issues of policy and procedure, and to ensure that policy and procedure are appropriately followed throughout the hearing. The Title IX Coordinator may serve as the Hearing Coordinator.
  - iii. In most cases, it should be possible to convene a hearing panel; however, if the hearing must be heard at or after the end of the semester or academic year and/or a full hearing panel cannot reasonably be convened, those cases may be heard by the College President (or designee) or the College may substitute an alternate method of adjudication at its discretion.

E. Advisors, Support Persons, and Attorneys

- (1) Advisor: In any hearing, the Complainant and Respondent may choose to be assisted by an advisor of their choice including a member of the Bay Mills Community College community, a family member, or an attorney.

The Dean of Students Office maintains a list of campus community members who have undergone Title IX training who can guide a student through the pre-hearing and hearing process. The advisor may accompany the student to any College investigative, administrative or adjudicative meeting, including the panel hearing. The advisor may not speak to the panel during the hearing or disrupt any interview or meeting.

- (2) Support Person: A Complainant and Respondent may also choose to be assisted by an emotional support person of their choice. To serve as a support person, the individual will be required to meet with a Hearing Coordinator in advance of any participation in the proceedings. The Survivor Advocate may serve as a support person for a Complainant.

F. The support person cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. This person is not to address the hearing panel, except to ask for a short recess if one of the parties requires some time to compose him or herself or collect his or her thoughts. The Hearing Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a support person and whether the person may remain at the proceedings. While the support person may be present to hear testimony, no written materials are to be shared with support people.

G. Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have a support person present.

- (1) Role of the Attorney/Outside Agreements: The College will not recognize or enforce agreements between the parties outside of these procedures.

#### H. Pre-Hearing Procedures

- (1) Notice of Charges-Following the threshold determination that there is sufficient information to move forward with a hearing, the Hearing Coordinator will send written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

- (2) Pre-Hearing Meeting with Complainant and Respondent-Following the Notification Letter, the Hearing Coordinator will contact the Complainant and Respondent to schedule separate meetings with each party. At this

pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant or Respondent to this initial meeting.

- (3) Notice of Hearing-Once each party has met with the Hearing Coordinator, a Notice of Hearing is sent to the Complainant and the Respondent. In addition, the Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case.
  - (4) In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.
  - (5) Composition of the Hearing Panel-The Complainant and the Respondent may submit a written request to the Hearing Coordinator that a member of the hearing panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one's ability to appeal the outcome based on perceived or actual bias.
  - (6) Pre-Hearing Review of Documents-The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by tribal, state and federal law, at least five (5) business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented to the hearing panel.
  - (7) Witnesses-The Complainant, Respondent, and the hearing panel all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.
- I. In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed



as part of the College's investigation, the following must be submitted no later than five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- (1) The names of any witnesses that either party intends to call;
  - (2) A written statement and/or description of what each witness observed, if not already provided during investigation;
  - (3) A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
  - (4) The reason why the witness was not interviewed by the investigator, if applicable.
- J. The Hearing Coordinator will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview the newly proffered witness.
- K. If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than five (5) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the panel), regardless of who called them to the hearing.
- (1) **Relevance-** The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Hearing Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.
  - (2) **Prior Sexual History and/or Pattern Evidence.**

- L. **Prior Sexual History of a Complainant:** In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.
- M. **Pattern Evidence by a Respondent:** Where there is evidence of pattern of conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.
- N. The College, through the Hearing Coordinator, may choose to introduce this information, with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Hearing Coordinator. The Hearing Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.
- O. To aid in an advance determination of relevance, the following must be submitted no later five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:
- (1) A written statement and/or description of the proposed information, if not already provided during investigation; and
  - (2) A summary of why this information is relevant to making a decision of responsibility at the hearing.

P. If this information is approved as appropriate for presentation at the hearing, the Respondent and Complainant will be provided with a brief description of the approved information no later than five (5) business days before the hearing.

- (1) Request to Reschedule Hearing-Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Hearing Coordinator with an explanation for his or her request at least three (3) business days prior to the hearing.
- (2) Consolidation of Hearings-At the discretion of the Hearing Coordinator multiple reports may be consolidated against a Respondent in one hearing, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under the Code of Student Conduct.

Q. Hearing Panel Procedures

- (1) Attendance at Hearing

R. If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence at the discretion of the Dean of Student Services.

S. A Respondent will not be permitted to withdraw from the College prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia. The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

T. A Complainant or Respondent may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy screen in the hearing room, allowing the Complainant or Respondent to speak outside the physical presence of the other by using relevant technology to facilitate participation. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the alleged Complainant or Respondent more comfortable, they are not intended to work to the disadvantage of the other party.

- (1) Participants in Hearing Procedures-The hearing panel is a closed hearing; it is not open to the public. The individuals who may appear before the hearing panel are: the Complainant; the Respondent; any individual serving as an approved advisor or support person; and any individuals appearing as witnesses.
- (2) Safeguarding of Privacy-All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College.

(3) Hearing Panel Procedures

- U. A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether College policy was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy.
- V. The hearing panel must review all pertinent information regarding the incident in question prior to the date of the hearing panel. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses.
- W. A member of the panel will be designated as the panel chair. A hearing will be called to order by the panel chair. The Hearing Coordinator serves as a (non-voting) advisor to the hearing panel. The chair will explain the hearing process and will provide an opportunity to all parties to ask procedural questions prior to initial statements and the presentation of information.
- X. The investigator will provide a brief opening statement summarizing the investigation. The opening statement should focus on the areas of agreement and disagreement in order to assist the hearing panel in prioritizing areas of inquiry. The hearing panel, Complainant, or Respondent may make brief inquiries of the investigator at this juncture, as there will be additional opportunity to ask questions of the investigator after the hearing panel has heard from the Complainant, the Respondent, and any witnesses.

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- Y. The Complainant may supplement the information provided to the panel with a brief statement. This is not intended to be a retelling of the event. The hearing panel may pose questions to the Complainant, including questions suggested by the Respondent.
  - Z. After the Complainant is finished, the Respondent will be given an opportunity, and is encouraged, to make a brief statement. The hearing panel may pose questions to the Respondent, including questions suggested by the Complainant.
  - AA. The panel may hear from witnesses on behalf of the Complainant and the Respondent. Each witness will be questioned by the hearing panel, and, as appropriate, the Complainant and the Respondent. Under some circumstances, the Complainant or Respondent may be asked to present a list of written questions to the panel, who will determine the relevance of the questions and pose any questions deemed relevant.
  - BB. The hearing panel, Complainant, and Respondent may then question the Investigator. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.
  - CC. At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact.

(1) Questioning of Witnesses

- DD. It is the responsibility of the hearing panel to assure that the information necessary to make an informed decision is presented. The panel members may play an active role in questioning both parties and witnesses involved in the case. At times, the panel members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context.
- EE. At no time will the complainant or the respondent be permitted to directly question one another. As outlined above, the parties may submit questions to the hearing panel in writing, which may be posed at the discretion of the hearing panel. Similarly, the panel members are under no obligation to allow either party to directly question witnesses, and the panel may require that questions to witnesses be submitted in writing.
- FF. Both parties are encouraged to prepare a written list of questions in advance. The parties may also submit questions in writing to the chair

throughout the course of the hearing. The chair, in consultation with the panel, will determine the appropriateness and relevance of the questions.

GG. Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge. The hearing panel reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision.

(1) Deliberation

HH. After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

II. The panel members will conduct their deliberations in private. The panel must complete their deliberations within two (2) business days, but every attempt will be made to complete the deliberations promptly. The Hearing Coordinator may remain for deliberations, but may not participate in the deliberations and may not vote.

JJ. The hearing panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the hearing panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Respondent is responsible for the alleged violation(s). The hearing panel must reach a decision on responsibility by majority vote. Only the decision on responsibility will be shared with the Complainant and the Respondent.

KK. If the panel finds the Respondent responsible, the panel will then recommend appropriate sanctions to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations and impose an appropriate sanction.

LL. The findings of the hearing panel will be reduced to writing. The findings will detail the findings of fact and the basis/rationale for the decision of the hearing panel, making reference to the evidence that led to the finding.

MM. Sanctions

(1) A hearing panel that finds a Respondent responsible for a violation of this policy may recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. The hearing panel will review these statements only if the Respondent has been found responsible for one or more violation.

- NN. Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion.
- OO. Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion.
- PP. The hearing panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.
- QQ. The hearing panel or Hearing Coordinator may also consider restorative justice outcomes that, taking into account the safety of the community as a whole, allows a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.
- RR. In appropriate cases, a panel may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. Where the panel determines that student misconduct was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.
- SS. The hearing panel will make a recommendation about the appropriate sanction. The Hearing Coordinator, in consultation with the Title IX Coordinator, may affirm or modify the recommended sanction(s). The Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances.
- TT. Sanctions that may be imposed under this policy include:
- UU. Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- VV. Censure: A written reprimand for violating the College policy. This conduct status specifies a period of time during which the student's or organization's good standing with the College may be in jeopardy. The student is officially warned that continuation or repetition of prohibited conduct may be

cause for additional conduct action including probation, suspension, or expulsion from the College.

WW. Disciplinary Probation: Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.

XX. Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

YY. Suspension: Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice.

ZZ. Expulsion: Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.

AAA. Revocation of Admission and/or Degree: Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

BBB. Withholding Degree: The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

CCC. Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

DDD. Outcome Letter

- (1) The outcome of the hearing panel will be final and communicated to the Complainant and Respondent in writing, usually within four (4) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.



- (2) Both parties have the right to be informed of the outcome. In addition, the Respondent will be fully informed of any sanctions. For reports involving sexual violence, the Complainant will be fully informed of any sanctions. For all other reports under this policy, the Complainant will be informed of only those sanctions that directly relate to the Complainant, consistent with FERPA and other applicable law.
- (3) The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.
- (4) The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

## I. Appeals

- A. Either party may appeal the final outcome in writing to the Dean of Student Services or designee (the "Appeals Officer"). The appeal will be conducted in an impartial manner by an impartial decision-maker. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.
- B. The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:
  - (1) A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
  - (2) New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

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- C. The receipt of the appeal will be acknowledged in writing (which can include email). Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.
  - D. In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the Appeals Officer determines that the appeal is not properly framed, the appeal will be denied.
  - E. If the appeal is based on procedural or substantive error, the Appeals Officer may return the complaint to the original hearing panel with instructions to reconvene to cure the error, or in rare cases where the error cannot be cured, the Appeals Officer can ask that a new hearing occur before a newly constituted hearing panel. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original hearing panel to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the hearing panel is final.
  - F. Appeals are not intended to be full rehearing of the complaint (*de novo*). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagrees with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.
  - H. Sanctions imposed are implemented immediately unless the Dean of Student Services stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

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- I. The Appeals Officer will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.
  
  - J. Integrity of Proceedings
    - (1) These procedures are entirely administrative in nature and are not considered legal proceedings. No party may audio or video record the proceedings, nor is formal legal representation allowed.
  
    - (2) At the Hearing Coordinator's discretion, anyone disrupting the hearing may be removed.
  
  - K. Records
    - (1) The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.
  
    - (2) Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.
  
    - (3) Generally, suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Dean of Students Office.