

# ***ADMINISTRATIVE PROCEDURE 3.404***

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## ***References Board of Trustees Policy: EP 1***

- Subject:*** Anti-Discrimination, Harassment, and Retaliation Policy and Procedure
- Adopted:*** September 1, 2021
- Amended:***
- Review:*** This procedure will be reviewed by the College’s EEO/AA Officer and Title IX Coordinator by June 30 of every even-numbered year.

### **I. POLICY OF NONDISCRIMINATION**

Equal employment and equal educational opportunity are fundamental principles at Elgin Community College (“the College”). The College strictly prohibits discrimination or harassment because of race, color, national origin, ancestry, sex/gender/gender identity, age, religion, disability, pregnancy, veteran status, marital status, sexual orientation, or any other status protected by applicable federal, state, or local law (“Protected Categories”).

This policy applies to all policies and procedures relating to recruitment, hiring, admission, financial aid, compensation, benefits, termination, and all other terms and conditions of employment and education.

Appropriate disciplinary action may be taken against any faculty or staff or student for violating this policy after review and investigation pursuant to the complaint resolution procedures set forth below.

### **II. APPLICABILITY**

This policy applies to faculty, staff, applicants for employment or enrollment, and students in the College and in College-sponsored settings outside of College facilities. The College’s policies prohibit unlawful discrimination, harassment, and retaliation whether engaged in by faculty, staff, or students, or, to the extent the College exercises control over the non-affiliated individual, by someone associated with, although not directly employed or enrolled by, the College (e.g., outside vendor or consultant).

### **III. DISCRIMINATION**

Discrimination is defined as treating someone differently because of their membership in a Protected Category (or a perception that someone is a member of a Protected Category) in matters of admissions, employment, services, or any other educational programs or activities of the College. Disparate treatment discrimination occurs when there has been an adverse impact on the individual’s work or educational environment, individuals outside of the protected class have received more favorable treatment, and there is no legitimate, non-discriminatory reason for the action. Disparate impact discrimination occurs when a College policy or practice adversely impacts persons in a protected class even though the policy or practice is neutral on its face.

Examples of prohibited discrimination include (but are not limited to):

- refusing to offer employment or educational opportunities to someone because of the person's protected status;
- considering a person's protected status in deciding an employee's salary or a student's grade;
- making any other employment or academic decision based on a person's protected status.

Additional information regarding the College's prohibition against disability discrimination, as well as information regarding accommodations for individuals with disabilities, is set forth in Administrative Procedure 3.501 (Individuals with Disabilities).

#### **IV. HARASSMENT**

Harassment is a form of discrimination strictly prohibited by this policy. Harassment is defined as verbal or physical conduct (including conduct using technology) directed toward an individual because of their membership in a Protected Category (or a perception that someone is a member of a Protected Category) that has the purpose or effect of substantially interfering with the individual's educational or work performance, or creating an intimidating, hostile, or offensive working or academic environment. *Quid Pro Quo* Harassment occurs where submission to or rejection of prohibited conduct is used, explicitly or implicitly, as the basis for decisions adversely affecting an individual's education, employment, or participation in a College program or activity.

A person's subjective belief that behavior is intimidating, hostile, or offensive does not make that behavior Harassment. The behavior must create a hostile environment from both a subjective and objective perspective and must be so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives a member of the community of the ability to participate in or to receive benefits, services, or opportunities from the College's education or employment programs and/or activities. In determining whether a hostile environment exists, the College examines the context, nature, scope, frequency, duration, and location of incidents, as well as the relationships of the persons involved. Conduct that does not meet the definition of Harassment may still violate other College policies or expectations for appropriate/professional conduct set by the College and, accordingly, may result in discipline as determined appropriate by the College.

Examples of conduct that may, depending on its severity, constitute Harassment include (but are not limited to):

- Jokes or epithets about another person's protected status
- Teasing or practical jokes directed at a person based on his or her protected status.
- Displaying or circulating written materials or pictures that degrade a person or group based upon a protected characteristic.
- Verbal abuse or insults about, directed at, or made in the presence of an individual or group of individuals based on membership in a Protected Category.
- Acts of hazing or violence based on a person's protected status.

## **V. RELATIONSHIP TO OTHER POLICIES**

Complaints involving conduct addressed by the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure shall be addressed exclusively through that policy and process. This policy addresses all other forms of sex-based discrimination, including sex-based harassment that does not rise to the level of Sexual Harassment as defined in the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure. Conduct that is raised initially through a formal complaint under the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure may also be addressed under this policy, in the institution's discretion, when: (i) the conduct at issue, or some part of it, may constitute a violation of this policy irrespective of whether it constitutes Sexual Harassment under the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure; (ii) the formal complaint, or some part of it, has been dismissed under the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure; or (iii) a final determination of a formal complaint has been made under the Sex Discrimination, Sexual Misconduct and Interpersonal Violence Policy and Procedure and separate or additional action may be necessary to enforce this policy.

Complaints of disability discrimination, including disability harassment, will be processed pursuant to the College's ADA and Section 504 grievance procedure (Administrative Procedure 3.501 Individuals with Disabilities).

Complaints of all other forms of Discrimination and Harassment will be processed pursuant to the procedures set forth below.

## **VI. REPORTING DISCRIMINATION AND HARASSMENT**

The College encourages anyone witnessing or experiencing Discrimination or Harassment to report the conduct to the Title IX Coordinator or member of the President's Task Force. Although there is no specific time limit for reporting, an individual who believes that he or she has been subjected to Discrimination or Harassment is encouraged to contact the appropriate official as soon as possible after the alleged violation to discuss available resources and options for proceeding.

## **VII. PRESIDENT'S TASK FORCE**

The College's President has the ultimate responsibility for implementing this policy and for deciding the appropriate corrective action that should be taken to address violations of this policy. The President has appointed a Task Force on Discrimination and Harassment, to which the President has delegated day-to-day responsibility for this policy. The Task Force consists of the following College personnel:

- President's Task Force Chair: Marilyn Prentice, EEO/AA Officer and Title IX Coordinator
  - Contact: Office of the General Counsel, E210; [mprentice@elgin.edu](mailto:mprentice@elgin.edu); (847) 214-7992

- DeSean Coleman, Program Manager/Assistant Director of TRiO Upward Bound
  - Contact: K102.5; [dcoleman@elgin.edu](mailto:dcoleman@elgin.edu); (847) 214-6942
- Lauren Nehlsen, Director, International Education and Programs/PDSO/ARO
  - Contact: B105.19; [lnehlsen@elgin.edu](mailto:lnehlsen@elgin.edu); (847) 214-7809

The President may modify the composition of the Task Force at his or her discretion.

Any inquiries regarding this policy should be directed to the Title IX Coordinator or to one of the Task Force members identified above. These individuals will be available to meet with or talk to students, staff, and faculty regarding issues relating to prohibited Discrimination or Harassment.

### **VIII. EMPLOYEE REPORTING OBLIGATIONS**

Employees designated as Responsible Employees (defined in Appendix A) must report to the Title IX Coordinator or member of the President’s Task Force any incident of Discrimination or Harassment of which they are aware. The Responsible Employee must report all relevant details about the alleged incident, including the date, time and specific location of the alleged incident, and the names of all involved individuals.

In addition to the reporting requirements for Responsible Employees, all College employees who have information regarding Discrimination or Harassment should make a report to the Title IX Coordinator or any member of the President’s Task Force.

### **IX. THIRD PARTY REPORTING**

Any individual may make a report of Discrimination or Harassment. The report may be made without disclosing the identities of the parties involved. However, the College’s ability to respond to the third-party report of Discrimination or Harassment may be limited by the amount of information provided.

### **X. INVESTIGATION & GRIEVANCE PROCEDURES**

The College is committed to the prompt and equitable resolution of all alleged or suspected violations of this policy about which the College knows or reasonably should know, regardless of whether a complaint alleging a violation of this policy has been filed and regardless of where the conduct at issue occurred, provided that, in the case of off-campus conduct that does not occur in connection with a College sponsored event or program, there is an impact on the alleged victim’s educational or employment experience and opportunities at the College. The College’s ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the Complainant is willing to file a complaint or consent to an investigation and the College’s access to information relevant to the alleged or suspected violation of this policy. The College is nonetheless committed to investigating all alleged and suspected violations of this policy to the fullest extent possible under the circumstances.

These Investigation & Grievance Procedures apply to all suspected or alleged violations of this policy. These procedures will be implemented and applied in a manner that is consistent with all applicable collective bargaining agreements. If a grievance includes allegations or an individual files multiple grievances that could invoke more than one Administrative Procedure or other College policy or procedure, the College shall determine in its discretion what process it will use to resolve the grievance or grievances, and shall notify all parties of its determination. In addition, the College may, upon finding good cause, modify these Investigation & Grievance Procedures in the interests of promoting full and fair resolution of suspected or alleged violations of this policy in accordance with applicable law. Employees are also encouraged to consult any applicable collective bargaining agreement for additional procedures that may apply.

### **A. Reporting Alleged Violations of this Policy**

An individual who has a complaint against a student, faculty, staff member, or other individual involving an alleged violation of this policy should contact the Title IX Coordinator or any Task Force member, either by telephone or in writing. The College will promptly and equitably investigate and resolve all suspected or alleged violations of this policy.

To help ensure a prompt and thorough investigation, complainants are asked to provide as much information as possible, such as:

- The name, department, and position of the person or persons allegedly causing the prohibited discrimination, harassment, or retaliation.
- A description of any relevant incident(s), including the date(s), location(s), and the presence of any witnesses.
- The alleged effect of the incident(s) on the Complainant's opportunity to benefit from the College's programs or activities.
- The names of other individuals who might have been subject to the same or similar acts of discrimination, harassment, or retaliation.
- Although it is not required, any steps the Complainant has taken to try to stop the discrimination, harassment, or retaliation.
- Any other information the Complainant believes to be relevant to the alleged discrimination, harassment, or retaliation.

### **B. Investigation**

The investigation of any suspected or alleged violation of this policy will be completed within 90 days of the filing of a complaint or the date on which the College becomes aware of a suspected violation of this policy unless the College determines in its sole discretion that more time is required to complete the investigation. The nature and extent of the investigation will vary depending upon the circumstances, including whether the parties are amendable to pursuing an informal resolution (and the matter is eligible for informal resolution, as discussed below). As part of the investigation, the investigators will seek to interview the Complainant and Respondent.

All employees and other individuals covered under this policy are required to cooperate with the College's investigation into suspected Discrimination or Harassment and are required to provide truthful and complete answers to any questions asked by the investigator.

### **C. Interim Measures**

When the College becomes aware of a potential violation of this policy, it will conduct an initial assessment to determine whether there is reasonable cause to believe that the Respondent poses a continuing, significant threat of harm to the health, safety, and welfare of others or to the campus community, and whether interim measures are necessary to alleviate or mitigate that risk.

If the College determines that immediate action may be necessary to protect the rights, interests, or safety of the Complainant, Respondent, or the College community, it will implement protective measures, which may include course-related adjustments, modifications to work or class schedules, changes in work locations, leaves of absence, directives to the parties regarding personal contact, and, in severe cases, the immediate suspension of the Respondent pending the completion of a formal investigation. These remedial and protective actions may be coordinated with any similar actions independently provided by the College upon the request of the Complainant.

The College will maintain the confidentiality of interim measures provided to either a complainant or respondent, to the extent that maintaining such confidentiality does not impair the College's ability to provide the measures in question.

### **D. Informal Resolution Process**

If both the Complainant and Respondent agree, reports of Discrimination or Harassment may be referred to informal resolution. Prior to commencing the informal resolution process, the parties will receive a written notice that:

- Describes the parameters and requirements of the informal resolution process;
- Identifies the individual responsible for conducting the informal resolution;
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the formal complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. The College may also commence the formal resolution process at any time if it believes it necessary to do so to protect the interests of the College community.

## **E. Formal Resolution Process**

The informal or formal resolution process applies (i) when any party so requests in connection with a matter that is eligible for informal resolution; (ii) to all matters that are not eligible for informal resolution (i.e., matters involving alleged or suspected sexual assault, sexual violence, domestic violence, dating violence, or stalking) and (iii) matters in which the College concludes if an informal or formal resolution is necessary to protect the interests of the College community. As part of the informal or formal resolution process, the College may determine what investigative steps are required to complete the College's investigation.

The formal resolution process will apply to matters involving an alleged or suspected sexual assault, sexual violence, domestic violence, dating violence, or stalking, where the respondent is a College employee and the complainant is a student.

## **F. Notice to the Respondent**

The College shall provide the Respondent with written notice of any investigation commenced pursuant to these procedures. The written notice will include sufficient details known at the time so that the Respondent may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Discrimination or Harassment, and the date and location of the alleged incident (if known).

## **G. Rights of the Parties**

During the investigation and resolution of a complaint, the Complainant and Respondent shall have equal rights. They include:

- Receiving copies of all relevant policies which apply to the allegation(s).
- The opportunity to speak on their own behalf.
- The opportunity to identify witnesses who can provide information about the alleged conduct at issue.
- The opportunity to submit other evidence on their behalf.
- The opportunity to provide written questions to the investigator to be asked of the other party or witnesses.
- Timely notice of meetings providing sufficient time to prepare for meaningful participation.
- Similar and timely access to relevant information considered by the investigator.
- Equal opportunity to review any statements or evidence provided by the other party.
- Equal access to review and comment upon any information independently developed by the investigator.
- Simultaneous notification of the results of all proceedings under this policy, any changes to the results, and when such results become final.
- The right to be assisted by an advisor.
- The opportunity to appeal the outcome of the investigation.

## **H. Complainant Rights and Options**

In any matter where the complaint involves allegations of sexual assault, domestic violence, dating violence, or stalking, the Complainant shall be provided a written notice of rights and options that includes a description of available options for, and assistance in, changing academic, transportation, and working situations, as well as information about:

- The importance of seeking immediate medical attention for sexual violence.
- Other available health care and counseling services.
- The importance of preserving evidence for proof in the investigation or subsequent proceedings, or for obtaining a protective order.
- How and to whom the alleged offense should be reported.
- Options regarding notifying law enforcement and/or campus authorities, including notification of the Complainant's right to:
  - notify either police (local or campus) or campus authorities
  - be assisted by campus authorities in notifying law enforcement if the Complainant so chooses
  - decline to notify such authorities
- The rights of Complainant and the institution's responsibilities to notify law enforcement of any orders of protection, "no contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

## **I. Preliminary Investigation Report**

At the conclusion of the investigation, the President's Task Force will prepare a preliminary investigation report. The preliminary report will contain a summary of the alleged conduct in violation of policy; summary of the response to the allegations; summary of the scope of the investigation; summary of the relevant exculpatory and inculpatory evidence; and summary of material facts on which the parties agree and disagree. The report will include copies of all relevant evidence received and considered during the investigation. Both parties will be provided a copy of the preliminary report and have three (3) business days to respond to it in writing.

If, after receiving the written responses regarding the preliminary investigation report, the Task Force determines that no further inquiry is required, the investigation will be deemed complete and final. If, in the sole discretion of the Task Force, further inquiry is necessary, the Task Force will follow up on the information and ask any clarifying questions of the parties and witnesses before finalizing and completing the investigation. Any additional relevant information received and/or answers to clarifying questions will be included in the final investigation report.

## **J. Final Investigation Report**

The President's Task Force will issue a final investigation report simultaneously to both parties that includes a statement of, and rationale for, each allegation that constitutes a separate potential violation of this policy, including a determination regarding responsibility for each separate potential incident. The written decision shall articulate findings of fact, made under a



preponderance of the evidence standard, that support the determination. The written decision shall also include notice of the procedures to file an appeal.

When a preponderance of the evidence supports a finding that this policy has been violated, the matter will be referred for appropriate disciplinary and remedial action. When there is insufficient evidence to find a violation of this policy, the complaint will be closed. Such a finding does not preclude further review or action by other administrative offices if the underlying conduct could constitute a violation of other College policies.

### **K. Standard for Determining Responsibility**

The standard used for determination is whether it is more likely than not that the alleged violation occurred. This is often referred to as a “preponderance of the evidence” standard.

### **L. Sanctions; Corrective Actions**

The College will take reasonable steps to prevent the recurrence of any violations of this policy and to correct the discriminatory effects on the Complainant (and others, if appropriate). The range of potential sanctions/corrective actions that may be imposed against a student includes but is not limited to the following: written or verbal apology, discrimination or harassment education, verbal or written warning, probation, suspension, and dismissal from the College. Employees who are found to have violated this policy may be terminated or subjected to other disciplinary action. Employees are advised to consult any applicable collective bargaining agreement for additional information regarding disciplinary action. Guests and other third parties who are found to have violated this policy are subject to corrective action deemed appropriate by the College, which may include removal from the College and termination of any applicable contractual or other arrangements. If the College is unable to take disciplinary or other corrective action in response to a violation of this policy, the College will nonetheless pursue other available steps to limit the effects of the conduct at issue and prevent its recurrence.

### **M. Right to Appeal**

Either party may appeal the investigation outcome, including the issue of whether there is a policy violation and any sanction(s) imposed. An appeal must be based on one or more of the following grounds:

1. A procedural irregularity occurred;
2. New evidence or information exists that could affect the outcome of the matter;
3. The President’s Task Force or a member of the Task Force had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter; and/or
4. The sanction is disproportionate with the violation.

Absent any applicable collective bargaining agreement provision to the contrary, any appeal must be submitted in writing to the President or the President's designee within seven (7) calendar days of being notified of the outcome and sanction (where applicable) and must set forth the grounds upon which the appeal is based.

Both parties will be informed in writing of the outcome of any appeal within fifteen (15) calendar days of the date by which all requested information is received unless the President (or designee) determines that additional time is required. Any such appeal will be the final level of review unless further review is provided under any applicable collective bargaining agreement or other applicable College policy or procedure.

#### **N. Advisors**

The Complainant and the Respondent have the same opportunity to be accompanied to any related meeting or proceeding by one advisor (a union representative if the party is part of a collective bargaining agreement) for support, guidance, and/or advice, provided that the advisor complies with the guidelines for advisors outlined in this policy. The advisor may not be a witness and, in cases involving multiple complainants or respondents, the advisor cannot be another complainant or respondent. For matters other than sexual assault, domestic violence, dating violence, or stalking, the advisor may not be an attorney.

The advisor's role is to provide support, guidance and/or advice only. The advisor may not participate in any manner during any related meeting or proceeding. This advisor may not: (1) address or question the Task Force, or other parties or witnesses; (2) present evidence or make arguments; or (3) have any role other than to accompany and communicate with the party requesting support and/or advice. The Complainant or the Respondent may request a break during any meeting and/or proceeding to allow the Complainant or the Respondent to confer with their respective advisor in private.

The College reserves the right to remove or dismiss an advisor who fails to follow this policy and applicable provisions of the complaint procedures, in which case the party will be allowed to select a different advisor.

The College may consider reasonable requests to reschedule a meeting or proceeding because an advisor cannot be present, however, the College is not required to do so and will not do so if it unreasonably delays the process.

#### **XI. PROHIBITION AGAINST RETALIATION**

No individual who makes a complaint alleging a violation of this policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation because of such activity or participation. Retaliation exists when action is taken against a party or participant in the complaint process that (i) adversely affects the individual's opportunity to benefit from the College's programs or activities; and (ii) is motivated in whole or in part by the individual's participation in the complaint process. Any acts of retaliation, as defined in this policy, shall be

grounds for disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff.

Examples of prohibited retaliation include (but are not limited to):

- Refusing to offer employment or educational opportunities to someone because of the person's protected activity.
- Considering a person's protected activity in deciding an employee's salary or a student's grade.
- Making any other employment or academic decision based on a person's protected activity.
- Ostracizing a person because of the person's protected activity.

## **XII. CONFLICTS OF INTEREST AND BIAS**

All College officials participating in this process will be free of any material conflicts of interest or material bias. Any party who believes an official has a material conflict of interest or material bias must raise the concern promptly so that the College may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

## **XIII. CONFIDENTIALITY**

The College is committed to protecting the privacy of all individuals involved in a report of Harassment or Discrimination. 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 allegations. The privacy of the parties will always be respected and safeguarded. For purposes of this policy, privacy and confidentiality have distinct meanings.

Privacy means that information related to a report of Discrimination or Harassment will only be shared with a limited number of individuals who are College employees who need to know in order to assist in the active review, investigation, or resolution of the report.

Confidentiality means that personally identifying information, such as names or information that directly or indirectly identifies the individuals involved in the incident cannot be revealed to another individual without express permission of the individual, unless there are circumstances posing an imminent risk of harm to self or others. Complete confidentiality is only available when information is disclosed to professionals who are mandated by law to protect the confidential disclosures.

The College will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, the College cannot guarantee confidentiality to complainants and respondents.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, 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. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the College's ability to respond may be limited. The College reserves the right to initiate and proceed with an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College community.

The College must balance the victim's desire for confidentiality against the overall campus safety. Factors to consider include: (a) was a weapon involved in the incident; (b) is the accused a repeat offender; (c) does the incident create a risk of occurring again; (d) are there other sources of evidence that could be used to identify the accused (i.e., surveillance cameras); and (e) will the College be able to eliminate the hostile environment without disclosing the identity of the victim. If the College is unable to honor the victim's request for confidentiality, the College will notify the victim before the victim's identity is disclosed to the accused.

#### **XIV. FREEDOM OF EXPRESSION AND ACADEMIC FREEDOM**

The College values freedom of expression, academic freedom, and the open exchange of ideas; the expression of controversial ideas and differing views is vital to college discourse. The College is equally committed to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist. Discrimination, Harassment, and Retaliation against members of the College community are not protected expression or the proper exercise of academic freedom. The College will consider its commitment to free expression and academic freedom in the investigation of reports of Discrimination and Harassment that involve an individual's statements or speech.

#### **XV. CONSENSUAL RELATIONSHIPS**

In light of the potential for misunderstanding, morale problems, or abuse arising from consensual romantic or sexual relationships within the College community, the College has adopted Personal Relationships Between Employees (Administrative Procedure 5.403). That policy prohibits employees from having evaluative authority (e.g., employment, compensation, promotion, or termination) over employees with whom they have or have had a relationship within the preceding twelve months.

The College prohibits sexual and/or romantic relationships between its employees and students in all contexts.

A faculty member may not date, or otherwise be involved in a romantic or sexual relationship with, a student who is currently in his/her class. Even dating students who are not, and will not be, taught or supervised by the faculty member creates the potential for conflict of interest for the faculty member. The faculty member should be careful to refrain from any actions or decisions that may reward or penalize the consenting student. This includes writing any reference letters, performing evaluations, or recommending the student for scholarships, internships, or future employment.

Faculty members may not have evaluative or supervisory authority over a student with whom the faculty member previously had a romantic or sexual relationship. Other College employees may not have evaluative or supervisory authority over a student with whom the employee is having or has had a romantic or sexual relationship. If such a relationship exists or has existed, the faculty member or employee must report the relationship to his or her supervisor or the Vice President of Teaching, Learning, & Student Development. If the person to whom the relationship is reported determines that reassignment or other mitigating action is necessary, it is the responsibility of both the faculty member/employee and the individual to whom the relationship is reported to ensure that the evaluative or supervisory authority is reassigned or other appropriate mitigating action is taken. If such action is not feasible in a particular instance, the faculty member/employee and the individual to whom the relationship is reported must bring the matter to the attention of the Vice President of Teaching, Learning, & Student Development to determine the appropriate course of action. Failure to report a relationship required to be reported under this paragraph is a violation of this policy.

## **XVI. FABRICATED ALLEGATIONS**

Any allegations suspected to be fabricated for the purpose of harassing the accused party or disrupting the College's operations are subject to these investigation and grievance procedures and could result in disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff.

## **XVII. RECORDKEEPING**

The College will maintain documentation regarding all relevant complaints filed under this policy, including documentation of all investigations, resolutions (informal or formal), and appeals conducted under these complaint resolution procedures.

The complaint filed shall be retained for a minimum of seven years and shall be stored in a manner reasonably designed to maintain their confidentiality. However, nothing in this policy shall limit the College's right to use the complaint files, or portions thereof, in connection with the College's business, the investigation or resolution of other complaints, in the course of litigation, or in connection with any investigation by any government agency.

## **XVIII. TRAINING**

These procedures will be implemented by officials who receive annual training on issues related to Discrimination and Harassment, including sexual violence, domestic violence, dating violence, and stalking, and on methods and processes for conducting complaint investigations and proceedings in a manner that protects the safety of victims and promotes accountability.

## **XIX. EXTERNAL REPORTING OPTIONS**

Discrimination and Harassment are not only prohibited by the College, but are also prohibited by state, federal, and local law. Aside from the internal complaint process at the College, students and employees may also choose to pursue administrative remedies with the following government

entities. The College encourages employees to use the College's internal reporting process as a starting point so that the College can promptly address conduct.

U.S. Department of Education Office for Civil Rights  
John C. Kluczynski Federal Building  
230 S. Dearborn Street, 37th Floor  
Chicago, IL 60604  
312-730-1560  
Fax: 312-730-1576

U.S. Equal Employment Opportunity Commission-Chicago Office  
230 S Dearborn St., Suite 1866  
Chicago, IL 60604  
312-872-9744

State of Illinois Human Rights Commission James R. Thompson Center  
100 W. Randolph Street, Suite 5-100  
Chicago, IL 60601  
312-814-6269  
TDD: 312-814-4760  
Fax: 312-814-6517

## APPENDIX A

### Definitions for the College's Sex-Based Misconduct Procedures

1. **Bystander Intervention:** see Section 5 of the *Preventing Sexual Violence in Higher Education Act*, [110 ILCS 155/5](#).
2. **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sex-based misconduct.
3. **Confidential Advisor:** a person who is employed or contracted by the College to provide emergency and ongoing support to student survivors of sexual violence. Confidential Advisors may include persons employed by a community-based sexual assault crisis center with whom the College partners. Individuals designated as "Responsible Employees" in Section VI of these Procedures are not Confidential Advisors.
4. **Consent:** knowing and voluntary agreement to engage in sexual activity. Coercion, force, or the threat of either invalidates consent. Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance. A person's manner of dress does not constitute consent. Past consent to sexual activities does not imply ongoing or future consent. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. Consent may be withdrawn at any time. A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following: 1) the person is incapacitated due to the use or influence of alcohol or drugs; 2) the person is asleep or unconscious; 3) the person is under age; or 4) the person is incapacitated due to a mental disability.
5. **Coercion.** to force a person to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation or the use of physical force.
6. **Dating Violence:** violence committed by a person: 1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and 2) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
7. **Domestic Violence:** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Illinois, or by any other person against an adult or youth victim

who is protected from that person's acts under the domestic or family violence laws of the State of Illinois.

8. **Education Program or Activity:** refers to all the operations of the College, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the College. It also includes off-campus locations, events, or circumstances over which the College exercises substantial control over the Respondent and the context in which the Title IX Sexual Harassment occurs, including Title IX Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the College.
9. **Hate Crime:** an act or an attempted act that violates a criminal statute by any person that in any way constitutes an expression of hostility toward the victim because of his or her sex, race, ethnicity, religion, age, disability, national origin, sexual orientation, or gender-related identity, color, marital status, military status or unfavorable military discharge.
10. **Hostile Environment Sexual Harassment:** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the College's Education Programs or Activities.

In determining whether a hostile environment exists, the College will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The College will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities



- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

11. **Incapacitation:** when a person is incapable of giving consent due to the person's age, use of drugs or alcohol, or because an intellectual or other disability which prevents the person from having the capacity to give consent. Where alcohol or other drugs are involved, one does not have to be intoxicated or drunk to be considered incapacitated. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's: decision-making capacity, awareness of consequences and ability to make informed judgments, or capacity to appreciate the nature of the act. Whether a Respondent reasonably should have known that a Complainant was incapacitated will be evaluated using an objective reasonable person standard. The question is whether the Respondent knew, or a sober, reasonable person in the position of the Respondent, knew or should have known, that the complainant was incapacitated.

**Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give consent.**

*Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.*

12. **Interpersonal Violence:** sexual violence, domestic violence, dating violence or stalking under the *Preventing Sexual Violence in Higher Education Act*.
13. **Intimidation:** to intentionally make another timid or fearful, to compel or deter by or as if by threats. Intimidation is a form of retaliation prohibited by the College's Policy Prohibiting Sex-Based Misconduct and these Procedures.
14. **Preponderance of the Evidence:** when considering all the evidence in the case, the decision-maker is persuaded that the allegations are more probably true than not true.
15. **Quid Pro Quo Sexual Harassment:** is an employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

16. **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sex-based misconduct.
17. **Responsible Employee:** a College employee who has the authority to redress sex-based misconduct, who has the duty to report incidents of such misconduct or other student misconduct, or whom a student could reasonably believe has this authority or duty. Section VI of these Procedures lists categories of employees who are Responsible Employees for the College.
18. **Retaliation:** Any form of retaliation, including intimidation, threats, harassment and other adverse action taken or threatened against any complainant or person reporting or filing a complaint alleging sexual discrimination, harassment or misconduct or any person cooperating in the investigation of such allegations (including testifying, assisting or participating in any manner in an investigation) is strictly prohibited and may violate the protections of the *State Employees and Officials Ethics Act*, the *Whistleblower Act*, and the *Illinois Human Rights Act*. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by the College's Sex-Based Misconduct Policy and these Procedures. Retaliation may result in disciplinary or other action independent of the sanctions or supportive measures imposed in response to the allegations of sexual discrimination, harassment or misconduct.
19. **Sexual Harassment:** refers to Hostile Environment Sexual Harassment or Quid Pro Quo Harassment as defined in this policy.
20. **Sexual Violence:** Also referred to as "Sexual Assault" is any type of sexual contact or behavior that occurs by force or coercion, without consent of the recipient of the unwanted sexual activity, or in a familial relationship of a degree that would prohibit marriage. It includes sexual acts against a person who is unable to consent either due to age or lack of capacity or impairment. Sexual violence may involve individuals who are known to one another or have an intimate and/or sexual relationship, or may involve individuals not known to one another. Sexual violence includes, but is not limited to:
  - **Sexual Penetration without Consent:** Any 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, when consent is not present or coercion and/or force is used.
  - **Sexual Contact without Consent:** The touching of the private body parts of another person for the purpose of sexual gratification, when consent is not present or coercion and/or force is used. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the laws of the state in which the incident occurred. (For incidents that occur outside of the U.S. (e.g., study abroad programs), Illinois law will apply in determining a violation of this Policy.)
- **Statutory Rape:** Sexual intercourse with a person who is under the legal age of consent (17 years in Illinois). (For incidents that occur outside of the U.S. (e.g., study abroad programs), Illinois law will apply in determining a violation of this Policy.)

Additional examples include, but are not limited to the following:

- forcible sexual intercourse
- forcible sodomy
- forcible fondling
- child molestation
- incest
- attempted rape
- statutory rape
- rape

Sexual assault can occur between members of the same or opposite sex. Sexual assault includes any forced act against one's will where sex is the weapon.

21. **Sex-Based Misconduct:** Misconduct on the basis of sex, sexual orientation or gender-related identity. Such misconduct includes sex discrimination, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, sexual violence and stalking.
22. **Sexual Exploitation:** when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault. Sexual exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual's sexual activity or intimate body parts with an intent to embarrass such individual, non-consensual voyeurism, knowingly transmitting HIV or a sexually transmitted disease to another, or exposing one's genitals to another in non-consensual circumstances.
23. **Sexual Violence:** physical sexual acts attempted or perpetuated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the person's age, use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, sexual abuse and sexual coercion. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

24. **Survivor:** an individual who has experienced sexual violence, domestic violence, dating violence, or stalking while enrolled, employed, or attending an event at a higher education institution.
25. **Survivor-Centered:** See Section 5 of the *Preventing Sexual Violence in Higher Education Act*, [110 ILCS 155/5](#).
26. **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to: 1) fear for his or her safety or the safety of others; or 2) suffer substantial emotional distress.
27. **Threat:** any oral or written expression or gesture that could be interpreted by a reasonable person as conveying an intent to cause harm to persons or property.
28. **Title IX Sexual Harassment:** includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.
29. **Trauma-Informed Response:** See Section 5 of the *Preventing Sexual Violence in Higher Education Act*, [110 ILCS 155/5](#).