

# SEXUAL MISCONDUCT POLICY



## ARTICLE I. INTRODUCTION

### Section 1.01 Background

Erskine College (the “College”) is committed to maintaining and strengthening an environment founded on civility and respect. Sexual Misconduct, as defined by this Sexual Misconduct Policy (this “Policy”), is antithetical to the values and standards of the College community, is incompatible with the safe, healthy environment that the College community expects and deserves, and will not be tolerated.

The College is committed to providing programs, activities, and an educational and work environment free from sex discrimination and to fostering a community that promotes prompt reporting of all types of Sexual misconduct and timely and fair resolution of Sexual Misconduct Complaints. This Policy sets forth available resources, describes prohibited conduct, and establishes procedures for responding to Complaints of Sexual Misconduct.

The College will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all members of the College community.

The College is committed to eliminating Sexual Misconduct, preventing its recurrence, and addressing its effects.

### Section 1.02 Prohibition on Sexual Misconduct

This Policy is designed to protect the rights and needs of alleged victims and Respondents. Creating a safe environment is the responsibility of all members of the College community.

The College strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases. To that end, the College has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the College will properly investigate all allegations of Sexual Misconduct.

### Section 1.03 Applicability of this Policy

This Policy applies to any allegation of Sexual Misconduct made by or against a student or an employee of the College or a third party, regardless of the sex, sexual orientation, sexual identity, gender, gender expression, or gender identity of any party and wherever the alleged Sexual Misconduct occurred, if the conduct giving rise to the Complaint is related to the College’s academic, educational, athletic, or extracurricular programs or activities. There is no geographical limitation to invoking this Policy.

**IN THE CASE OF ALLEGATIONS OF SEXUAL MISCONDUCT, UNLESS OTHERWISE STATED, THIS POLICY SUPERSEDES AND APPLIES IN LIEU OF ALL OTHER PROCEDURES AND POLICIES REGARDING, AND REFERENCES TO, SEXUAL MISCONDUCT SET FORTH IN ANY OTHER DOCUMENT CONTAINING COLLEGE POLICIES AND/OR PROCEDURES.**

#### **Section 1.04 Period of Limitations**

A Complaint of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the Complaint. However, the College strongly encourages individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation, particularly if neither the Complainant nor the Respondent is employed by the College or enrolled as a student at the time.

#### **Section 1.05 Related Misconduct**

The Hearing Board may hear allegations of and impose sanctions for alleged misconduct that is related to the Sexual Misconduct at issue, even if such related misconduct is not, when standing alone, governed by this Policy.

#### **Section 1.06 Definitions**

Capitalized terms used in this Policy have the following meanings:

- (a) **Clery Act.** The “Clery Act” is defined in Section 3.02(a)(ii).
- (b) **Complainant.** A “Complainant” is an alleged victim of Sexual Misconduct who files a Complaint, or on whose behalf a Complaint is filed or initiated.
- (c) **Complaint.** A “Complaint” is an allegation of Sexual Misconduct asserted against another party and initiated pursuant to Section 5.01.
- (d) **Consent.** “Consent” is informed, freely and actively given, and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another. Consent cannot be inferred from:
  - (i) Silence, passivity, or lack of resistance alone;
  - (ii) A current or previous dating or sexual relationship;
  - (iii) Attire;
  - (iv) The spending of money on a date;
  - (v) Consent previously given.

Consent is not effective if it is obtained through the use of physical force, violence, duress, deception, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

- 1) Minors, even if the other participant did not know the minor's age.
- 2) Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled.
- 3) Persons who are Incapacitated.

The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy.

- (e) **Dating Violence.** "Dating Violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
- (f) **Domestic Violence.** "Domestic Violence" includes felony or misdemeanor crimes of violence committed by:
- (i) a current or former spouse of the victim,
  - (ii) a person with whom the victim shares a child in common,
  - (iii) a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner,
  - (iv) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of South Carolina, or
  - (v) 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 South Carolina.
- (g) **Education Record.** "Education Record" has the meaning assigned to it under FERPA.

- (h) **FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.
- (i) **Final Outcome Letter.** “Final Outcome Letter” is defined in Section 6.02(c)(iii).
- (j) **Hearing Board.** “Hearing Board” is defined in Section 6.02(a)(i).
- (k) **Incapacitated.** “Incapacitated” means lacking the physical and/or mental ability to make informed, rational judgments. A person may be Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.
- (l) **Investigative Report.** “Investigative Report” is defined in Section 5.04(d).
- (m) **Investigator.** The “Investigator” is a person designated by the Title IX Coordinator to investigate a Complaint pursuant to Section 5.04(b).
- (n) **Personally Identifiable Information.** “Personally Identifiable Information” (as that term is defined by FERPA) includes, but is not limited to
  - (i) a Student's name;
  - (ii) the name of a Student's parent(s) or other family members;
  - (iii) the address of a Student or a Student's family;
  - (iv) a personal identifier, such as a Student's social security number, Student number, or biometric record;
  - (v) other indirect identifiers, such as a Student's date of birth, place of birth, or mother's maiden name;
  - (vi) other information that, alone or in combination, is linked or linkable to a specific Student and that would allow a reasonable person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
  - (vii) Information requested by a person whom the College reasonably believes knows the identity of the Student to whom the Education Record relates.
- (o) **Rape.** “Rape” is 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.

- (p) **Respondent.** A “Respondent” is an individual who has been accused in a Complaint of committing Sexual Misconduct.
- (q) **Responsible Employee.** A “Responsible Employee” is an employee of the College who has the obligation to report to the Title IX Coordinator any Complaints or allegations of Sexual Misconduct of which he or she becomes aware. Strictly Confidential Resources are not Responsible Employees. The following individuals are the College’s Responsible Employees:
- (i) All Vice Presidents, Deans, Associate Deans, Department Chairs, Directors, and Coaches;
  - (ii) All Human Resources Staff;
  - (iii) All Student Services Staff (including Resident Directors and Student Life Assistants);
  - (iv) All employees and independent contractors serving in a supervisory or management role (including advisors of recognized student organizations and work-study supervisors);
  - (v) All members of the faculty; and
  - (vi) All Erskine College Police Officers.
- (r) **Retaliation.** “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with an allegation of Sexual Misconduct, including but not limited to intimidation, threats, and harassment.
- (s) **Sexual Assault.** “Sexual Assault” means any actual, attempted, or threatened sexual act with another person without that person’s Consent. By way of example and not limitation, Sexual Assault includes:
- (i) Fondling (the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances in which the victim is incapable of giving Consent because of his or her age or because he or she is temporarily or permanently Incapacitated),
  - (ii) Incest (sexual intercourse with an individual under the statutory age of consent, as defined by South Carolina law),
  - (iii) Rape, and
  - (iv) Statutory rape (sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by South Carolina law).

- (t) **Sexual Exploitation.** “Sexual Exploitation” means any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:
- (i) Causing or attempting to cause another person to be Incapacitated in order to gain a sexual advantage over such person;
  - (ii) Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media;
  - (iii) Allowing another person to observe Consensual sex without the knowledge or Consent from all participants;
  - (iv) Voyeurism; and
  - (v) Knowingly or recklessly transmitting a sexually transmitted disease to another individual.
- (u) **Sexual Harassment.** “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic, or physical conduct of a sexual nature. Examples of this Sexual Harassment include instances in which:
- (i) Submission or consent to the behavior is reasonably believed to carry consequences for the individual’s education, employment, on-campus living environment, or participation in a College activity. Examples of this type of sexual harassment include: (A) pressuring an individual to engage in sexual behavior for some educational or employment benefit, or (B) making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual
  - (ii) The behavior is so severe or pervasive that it has the effect of substantially interfering with the individual’s work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a College activity. Examples of this type of sexual harassment include: (A) persistent unwelcome efforts to develop a romantic or sexual relationship; (B) unwelcome sexual advances or requests for sexual favors; (C) unwelcome commentary about an individual's body or sexual activities; (D) repeated and unwelcome sexually-oriented teasing, joking, or flirting; (E) verbal abuse of a sexual nature; and (F) one or more instances of Sexual Assault.

Sexual Harassment also includes acts of intimidation, bullying, aggression or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

- (v) **Sexual Intimidation.** “Sexual Intimidation” includes but is not limited to:

- (i) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent;
  - (ii) Stalking or cyber-stalking; and
  - (iii) Engaging in indecent exposure with the intention of alarming, distressing, and/or offending others.
- (w) **Sexual Misconduct.** “Sexual Misconduct” means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The College encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:
  - (i) Dating Violence;
  - (ii) Domestic Violence;
  - (iii) Sexual Assault;
  - (iv) Sexual Exploitation;
  - (v) Sexual Harassment;
  - (vi) Sexual Intimidation; and
  - (vii) Stalking.
- (x) **Stalking.** “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property; “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim; and “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (y) **Strictly Confidential Resource.** “Strictly Confidential Resource” is defined in Section 3.01(a).

- (z) **Third-party Reporter.** A “Third-party Reporter” is an individual who reports information or files a Complaint alleging that another individual is a victim of Sexual Misconduct.
  
- (aa) **Title IX Coordinator.** The College’s “Title IX Coordinator” is Ms. Rebecca Magee. Ms. Magee’s office is located in Galloway 208. She may be contacted by phone at (864) 379-8859 or by email at [magee@erskine.edu](mailto:magee@erskine.edu). She is available from 8:00 a.m. to 4:00 p.m. Monday through Friday.

## • SEXUAL MISCONDUCT EDUCATION •

at

### Erskine College

#### | OUTREACH & PREVENTION |

Erskine College is committed to the prevention of Sexual Misconduct and routinely conducts outreach and educational programming designed to increase awareness of the prevalence of Sexual Misconduct involving college-age students and other College constituents, inform the Erskine community about issues related to Sexual Misconduct such as substance abuse and the role of the bystander, and promote knowledge of the school's Sexual Misconduct Policy.

#### | TRAINING |

The College regularly conducts Sexual Misconduct training for its constituents, including the following groups:

- Title IX Coordinator
- Investigators
- Members of the Hearing Board & Presidential Appeals Committee
- Employees
- Students
- College Police Officers

These groups are trained, as appropriate and applicable, on such subjects as:

- This Sexual Misconduct Policy.
- Title IX and related regulatory guidance.
- The College's responsibility to address allegations of Sexual Misconduct.
- Recognizing and responding to reports of Sexual Misconduct.
- Understanding common and counterintuitive victim responses (during and after an incident) and the effect of Sexual Misconduct on victims.
- Understanding the link between substance abuse and Sexual Misconduct.
- Which employees are "Responsible Employees" and which individuals and offices are confidential resources for Students.
- Reasonable, appropriate, and sensitive investigative, interview, and hearing techniques that protect victim safety and promote accountability.
- Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking.

## **ARTICLE II. HOW AND WHERE TO REPORT ALLEGED SEXUAL MISCONDUCT**

Because Sexual Misconduct may in some instances constitute both a violation of College policy and criminal activity, and because the College grievance process is not a substitute for instituting legal action, **the College encourages individuals to report alleged Sexual Misconduct promptly to College officials and to law enforcement authorities, where appropriate.**

Individuals have the option not to report alleged Sexual Misconduct to campus officials or to law enforcement authorities. The College respects the individual's decision in regards to reporting; however, subject to the Confidentiality provisions outlined in Article III of this Policy, if information about Sexual Misconduct comes to the attention of the College, the College (1) will start an investigation even in the absence of a filed Complaint and/or (2) may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

### **Section 2.01 Reporting to Local Law Enforcement**

**Individuals may file a complaint directly with local law enforcement agencies by dialing 911.** Dispatch may connect you with Erskine College, Due West, or Abbeville County law enforcement.

Individuals may also contact any of the following for assistance in filing a complaint with local law enforcement:

- (a) The Erskine College Police Department, available by phone at 864-379-8869 or (864) 378-1650, by email at [estep@erskine.edu](mailto:estep@erskine.edu), and in person in the Erskine College Police Department Building. The Erskine College Police Department is on duty from 9:00 p.m. to 5:00 a.m., seven days per week.
- (b) The College's Title IX Coordinator, Rebecca Magee, Assistant Athletic Director for Insurance and Compliance, available from 8:00 a.m. to 4:00 p.m., Monday through Friday, by phone at (864) 379-8859, by email at [magee@erskine.edu](mailto:magee@erskine.edu), or in person in Galloway 208.

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a College Complaint. Individuals who make a criminal complaint may also choose to pursue a College Complaint simultaneously.

### **Section 2.02 Reporting to the College**

If you wish for information regarding Sexual Misconduct to be investigated and addressed pursuant to this Policy, you must disclose such information to the **Title IX Coordinator** or to a **Responsible Employee**. *See Section 1.06 for a list of the College's Responsible Employees.* These individuals are REQUIRED to investigate and address allegations of Sexual Misconduct (or relay the allegations to the Title IX Coordinator to do so). Individuals who are not listed below are not subject to the same requirement (and in some instances, such as is generally the

case with Strictly Confidential Resources, are prohibited from reporting alleged Sexual Misconduct to others absent an express directive from the alleged victim to do so).

Individuals may report information regarding Sexual Misconduct on their own behalf (i.e., as alleged victims) OR on behalf of the alleged victim (i.e., as Third-party Reporters).

If the Title IX Coordinator is the Respondent or is otherwise at issue in a Complaint, or if an individual is otherwise uncomfortable making a Complaint to the Title IX Coordinator, he or she may report alleged Sexual Misconduct to the Senior Vice President for Finance and Operations (by phone at (864) 379-8812 and located in Belk Hall).

No member of the College community may discourage an individual from reporting alleged incidents of Sexual Misconduct. **With the exception of certain research-based disclosures described in the following paragraph, a Responsible Employee with any knowledge (including firsthand observation) about a known or suspected incident of Sexual Misconduct must report the incident to the Title IX Coordinator.** No employee is authorized to investigate or resolve Complaints without the approval and involvement of the Title IX Coordinator.

Disclosures of incidents of alleged Sexual Misconduct made by an individual during such individual's participation as a subject in an Institutional Review Board–approved human subjects research protocol (an “Approved Research Project”) will not be considered notice to the University of Sexual Misconduct for purposes of triggering its obligation to investigate the incident at issue. (Said another way, a Responsible Employee whose knowledge of a known or suspected incident of Sexual Misconduct is gained as a result of conducting an Approved Research Protocol is not required to report the incident to the Title IX Coordinator.) Institutional Review Boards may, in appropriate cases, require researchers to provide information to all subjects of a study about the subjects' Title IX rights and about available University and community resources and support services with regard to Sexual Misconduct.

## ARTICLE III. CONFIDENTIALITY

### Section 3.01 Confidentiality in Reporting and Disclosure

The College encourages victims of Sexual Misconduct to talk to someone about what happened, both so that they can get the support they need and so that the College can respond appropriately. The College wants individuals to be aware of the various reporting and confidential disclosure options available to them so that they can make informed choices about where to turn should they be subjected to Sexual Misconduct.

- (a) **Licensed Mental Health Counselors and Medical Staff.** Individuals may discuss alleged Sexual Misconduct in strict confidence with College employees who work in the following offices (“Strictly Confidential Resources”):
  - (i) Health and Counseling Services (864-379-2345)
  - (ii) Chaplain (864-379-6675)

This means that Personally Identifiable Information shared with Strictly Confidential Resources is not part of students’ or employees’ College records and will not be reported to other College personnel (including the Title IX Coordinator), to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions involving imminent harm to one or more members of the College community, for example)).

**Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that many of the College employees who are not Strictly Confidential Resources are Responsible Employees. Communications made to Responsible Employees (and others) are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources**

- (b) **Responsible Employees.** A disclosure to a Responsible Employee (defined in Section 1.06) constitutes a report to the College and obligates the College to investigate the incident and take appropriate steps to address the allegations.

### Section 3.02 Confidentiality in the Investigation and Resolution Processes

- (a) **Sharing of Information (Applicable to All Reports and Complaints).** The College will respect and will make every feasible effort to avoid the inappropriate disclosure of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

Information regarding alleged Sexual Misconduct will generally be disclosed by College personnel only as follows:

- (i) The College's Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator (see Section 2.02 for additional information on reporting to Responsible Employees).
  - (ii) College personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the College may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as a statistical, anonymous report for data collection purposes under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46) (the "Clery Act") which requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on or near their respective campuses.
  - (iii) College personnel may report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.
  - (iv) College administrators will share information regarding alleged Sexual Misconduct, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct.
- (b) **Requests for Confidentiality.** If information regarding alleged Sexual Misconduct is shared with Responsible Employees, and the victim desires that • the information not be shared with other Responsible Employees, with the Respondent, or with others, even as appropriate and necessary to address the allegations, • that the College not investigate the information, or • that no disciplinary action be taken, the victim must request that the College treat such information as confidential. This request must be made to the Title IX Coordinator.
- (i) **Evaluation of the Request.** The College takes requests for heightened confidentiality seriously; however, granting such requests may limit the College's ability to investigate and take reasonable action in response to a Complaint. The Title IX Coordinator will evaluate the request for confidentiality in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment and will determine whether such request will be granted. In order to make such a

determination, the Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh requests for confidentiality against the following factors, among others:

- 1) the seriousness of the alleged Sexual Misconduct (including, but not limited to, whether the Sexual Misconduct was perpetrated with a weapon);
- 2) the increased risk that the alleged perpetrator will commit additional acts of Sexual Misconduct, such as (A) whether there have been other reports or complaints against the alleged perpetrator, (B) whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of Sexual Misconduct or a history of violence, (C) whether the alleged perpetrator threatened further Sexual Misconduct or threatened violence against the victim or others, or (D) whether the Sexual Misconduct was committed by multiple perpetrators;
- 3) whether the information reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group or person;
- 4) the Respondent's right to receive information about the allegations if the information is maintained by the College as an Education Record;
- 5) whether the victim is a minor; and
- 6) whether the College possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g., security cameras or security personnel, physical evidence).

The presence of one or more of these factors may lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College may honor the request for confidentiality.

- (ii) **Determination as to Whether Request Can Be Granted.** The Title IX Coordinator will inform the person requesting confidentiality whether the College intends to honor the request or whether the College intends to pursue investigation and/or resolution in spite of the request.

**If the College determines that it cannot maintain confidentiality,** it will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for addressing the allegations. The College will also take ongoing steps to protect the victim from Retaliation or harm and work with the victim to create a safety plan, if warranted, and assist the victim in accessing other services and interim measures (see Section 5.02(a)).

**If the College honors the request for confidentiality**, the College's ability to investigate and take reasonable action in response to an allegation of Sexual Misconduct may be limited. A Respondent is entitled to know the name of the accuser and information regarding the nature of the allegations in order to defend against the allegations; thus, the College may not be able both to adjudicate the Complaint and to maintain confidentiality during that process.

Even when the College determines to abide by a request for confidentiality (and even if such request limits the College's ability to take disciplinary action against the Respondent):

- 1) To the extent practicable and appropriate, the College will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the College may take appropriate interim measures to ensure an individual's safety even in the absence of a College proceeding. The College may also consider broader remedial action (such as increased monitoring, supervision, or security at locations where reported sexual violence occurred, increased education and prevention efforts, including to targeted population groups, and climate assessments).
- 2) Information regarding the alleged Sexual Misconduct may be included in College records, as necessary and appropriate.
- 3) College personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the College may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

Please note that the College cannot control disclosure by students or third parties.

*Reporting to the College:*

**WHAT HAPPENS AFTER I REPORT?**

<p>If you reported directly to the <b>Title IX Coordinator</b>:</p>	<p><b>The Title IX Coordinator will initiate the investigation and resolution process</b> (unless you request confidentiality pursuant to Section 3.02(b), in which case the information will be held in confidence unless the Title IX Coordinator determines that, due to the College’s commitment to provide a reasonably safe and non-discriminatory environment, the request cannot be granted).</p>
<p>If you reported to a <b>Responsible Employee</b>:</p>	<p><b>The Responsible Employee will forward the information to the Title IX Coordinator, who will initiate the investigation and resolution process</b> (unless you request confidentiality pursuant to Section 3.02(b) in which case the information will be held in confidence unless the Title IX Coordinator determines that, due to the College’s commitment to provide a reasonably safe and non-discriminatory environment, the request cannot be granted).</p>
<p>If you confided in <b>Health and Counseling Services or the Chaplain</b>:</p>	<p><b>The information you provided will remain strictly confidential</b> and will not* be reported to the Title IX Coordinator (or anyone else) for investigation and resolution.</p> <p><i>*Remember that in unusual circumstances the information you share with Health and Counseling Services or the Chaplain (such as situations involving imminent harm to a member of the community or situations involving abuse of a minor) may be disclosed.</i></p>
<p>If you reported to someone else (i.e., <b>someone other than the Title IX Coordinator, a Responsible Employee, Health and Counseling Services, or the Chaplain</b>):</p>	<p><b>The individual may or may not report details regarding the information you provided to the Title IX Coordinator.</b> This is because the individual to whom you reported is not <i>obligated</i> to relay allegations of Sexual Misconduct to the Title IX Coordinator (and, conversely, is likely not <i>obligated</i> to maintain the information you shared in confidence).</p> <p><i>For this reason, if you would like the information you share to be addressed by Erskine College, direct it to a Title IX Coordinator or a Responsible Employee. Conversely, if you would like the information you share to be maintained in strict confidence, direct it to Health and Counseling Services or the Chaplain.</i></p>

**ARTICLE IV.  
GENERAL PROVISIONS APPLICABLE TO  
ALL ALLEGATIONS OF SEXUAL MISCONDUCT**

**Section 4.01 Oversight**

The Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with or disclosed to the College.

**Section 4.02 Conflicts**

If any employee designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent, then the Title IX Coordinator will appoint another College administrator to perform such person's duties under this Policy. (If the Title IX Coordinator is the Respondent, then the President of the College will appoint another College employee to perform his or her duties under this Policy.)

**Section 4.03 Advisors**

Both the Complainant and the Respondent may have one advisor present to support and assist them throughout the Complaint process (including, but not limited to, during related prehearing meetings, during investigative interviews, and during the hearing or proceeding). The Complainant and the Respondent are not limited in their choice of advisor. Advisors may be friends, victim advocates, lawyers, or others. The Complainant and the Respondent may consult with their respective advisors during meetings and/or during any hearing or proceeding, provided that such consultation is not disruptive. Advisors may not, however, have a speaking role during any meeting or hearing. In addition, the advisor's attendance may be disallowed if such advisor's presence would be obstructive or would otherwise warrant his or her removal. Absent accommodation for disability, the Complainant and the Respondent may not be accompanied by more than one advisor or by other individuals during meetings and/or the hearing.

**Section 4.04 Timing**

The College will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as timely and efficient a manner as possible. The College's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. A hearing, if any, will take place within 20 business days of the conclusion of the investigation. If a hearing has taken place, both the Complainant and the Respondent will receive a Final Outcome Letter within 20 business days of the conclusion of the hearing. Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary and for good cause.

#### **Section 4.05 Documentation**

The College will retain documentation (including but not limited to the written Complaint, notifications, the Investigative Report, written findings of fact, petitions for appeal, and any written communication between the parties), for at least seven years. Documentation pertaining to expulsions or degree revocations will be retained indefinitely or in accordance with College policy.

#### **Section 4.06 Prohibition on Retaliation**

Retaliation against any person for filing, supporting, or providing information in good faith in connection with a Complaint of Sexual Misconduct is strictly prohibited. Violations of this prohibition will be addressed through this Policy and/or other College disciplinary procedures, such as the Student Code of Conduct, as deemed appropriate in the College's discretion. Any person who feels that he or she has been subjected to Retaliation should make a report to the Title IX Coordinator.

#### **Section 4.07 Prohibition on Providing False Information**

Any individual who knowingly files a false Complaint under this Policy, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action.

#### **Section 4.08 Individuals with Disabilities**

The College will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for accommodations must be made to the Office of Student Services (located on the second floor of Watkins Student Center and available by phone at 864-379-8701). The Office of Student Services will review the supporting disability-related documentation, make a decision about the request, notify the individual about approved accommodations, and make arrangements for the accommodations.

**ARTICLE V.  
THE PROCESS APPLICABLE  
TO ALL COMPLAINTS OF SEXUAL MISCONDUCT**

**Section 5.01 STEP 1: A Report of Sexual Misconduct Becomes a Complaint**

A Complaint may be initiated in one of the following ways:

- (a) An alleged victim may file a written Complaint with the College or a third party may file a written Complaint on his or her behalf. An alleged victim may complete a Sexual Misconduct Complaint Form (found in the Office of Student Services, the Office of Human Resources, and in the office of the Title IX Coordinator) provided by the College or may submit a written statement in his or her own words providing sufficient information for the College to investigate the allegations contained therein (including but not limited to the name of the alleged victim, the name of the alleged perpetrator, and the date, location, and nature of the alleged Sexual Misconduct).
- (b) An alleged victim can meet in person with the Title IX Coordinator to report alleged Sexual Misconduct. In such a situation, the Title IX Coordinator will ask the alleged victim to complete a Complaint form provided by the College.
- (c) The College can determine, based on the information of which it becomes aware, that it is necessary and/or appropriate for it to investigate the information available to it.

Once a Complaint is initiated, an alleged victim will be referred to as a “Complainant” and an alleged perpetrator will be referred to as a “Respondent.”

**Section 5.02 STEP 2: Evaluation of Interim Measures and Interim Disciplinary Sanctions**

Following the initiation of a Complaint (and at any point during the Complaint, investigative or disciplinary processes, if the Title IX Coordinator deems it necessary for the protection of any member of the College community), the Title IX Coordinator will determine which, if any, of the following measures and/or actions should be taken:

- (a) **Interim Protective Measures for Complainants.** When warranted to ensure the safety and wellbeing of the Complainant, the Title IX Coordinator may implement one or more interim measures, if appropriate and/or reasonably available, including but not limited to the following:
  - (i) Issuing no-contact orders to prevent any contact between the Complainant, the Respondent, witnesses, and/or third parties;
  - (ii) Changing a Complainant’s or a Respondent’s on-campus housing, if any, to a different on-campus location and providing assistance from College personnel in completing the relocation;

- (iii) Changing a Complainant's or a Respondent's assigned dining facilities;
- (iv) Changing a Complainant's or a Respondent's work arrangements or schedules; and
- (v) Changing academic schedules (such as moving the Complainant or the Respondent from one class section to another).

**(b) Interim Disciplinary Measures for Respondents.**

- (i) **Student Respondents.** When a Student Respondent's alleged actions or behaviors affect the safety, health, or general welfare of the Complainant, other Students, and/or the College community, the Title IX Coordinator may impose interim disciplinary measures prior to the adjudication of the Complaint pursuant to this Policy.

Possible interim measures include but are not limited to (a) prohibiting the Respondent from being on College property and/or using College facilities (including residence halls and all other areas controlled, leased, or used by the College) (b) prohibiting the Respondent from attending classes or limiting class attendance, (c) prohibiting the Respondent from participating in and/or attending Student programs and activities, (d) suspension, (e) prohibiting the Respondent from representing the College on athletic teams or in leadership positions, and (f) prohibiting the Respondent from having contact with specified persons.

The Title IX Coordinator will notify the Respondent of the proposed interim measure(s) in writing. The Title IX Coordinator or the Respondent may request a meeting to discuss the restrictions to be imposed by the interim measure(s). The Respondent must make this request in writing to the Title IX Coordinator. If a meeting is requested, such meeting will be scheduled within three business days of the receipt of a written request. The Title IX Coordinator will conduct the meeting. The Respondent will be notified of the outcome of the meeting in writing. The written notification of the outcome is final as to the interim disciplinary action, pending the final results of the adjudication of the Complaint pursuant to this Policy.

- (ii) **Employee Respondents.** When an employee Respondent's alleged actions or behaviors affect the safety, health, or general welfare of the Complainant, Students, other employees, and/or the College community, the Title IX Coordinator may:
  - 1) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or
  - 2) take such steps as are reasonable, appropriate, and necessary to adjust the job duties of such Respondent or place him or her on

administrative leave. Determinations regarding employee discipline will be made in accordance with the College's policies and procedures governing such matters.

**Section 5.03 STEP 3: Initial Meetings with the Title IX Coordinator**

- (a) **Complainant's Initial Meeting with the Title IX Coordinator.** As soon as is practicable, the Title IX Coordinator will contact the Complainant to schedule an initial meeting. (If the person who reported the alleged Sexual Misconduct is a Third-party Reporter, the Title IX Coordinator will attempt to meet with him or her as soon as possible to gather information.) At this initial meeting, the Title IX Coordinator will, as applicable:
- (i) provide the Complainant a copy of this Policy;
  - (ii) provide the Complainant with a Sexual Misconduct Complaint Form on which the Complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location, and general nature of the alleged Sexual Misconduct (the Complainant may either complete the complaint form him- or herself or he or she may choose to dictate the information to the Title IX Coordinator, who will confirm the accuracy of his or her documentation with the Complainant);
  - (iii) explain the steps involved in the Sexual Misconduct investigation;
  - (iv) discuss confidentiality standards and concerns;
  - (v) determine whether the Complainant wishes to pursue a resolution through the College or no resolution of any kind;
  - (vi) refer the Complainant to Health and Counseling Services, or other resources, as appropriate;
  - (vii) discuss protection from and reporting of Retaliation; and
  - (viii) discuss with the Complainant, as appropriate, possible interim measures that can be provided to him or her during the pendency of the investigative and resolution processes. The College may implement such measures if requested, appropriate, and/or reasonably available, whether a Complaint has been filed (with either campus officials or law enforcement agencies) or whether an investigation has commenced (by either campus officials or law enforcement agencies). Interim measures may include the protective measures listed in Section 5.02(a) and/or other appropriate interim measures, such as:
    - 1) arranging to dissolve a campus housing contract and offering a pro-rated refund;

- 2) rescheduling class work, assignments, and examinations;
- 3) arranging for the Complainant to withdraw from or take an incomplete in class without penalty;
- 4) providing academic support services;
- 5) providing alternative course completion options;
- 6) permitting a temporary withdrawal from the College; and
- 7) providing counseling services.

Following the initial meeting with the Complainant, the Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the Complainant. Such determination will be promptly communicated to the Complainant (and in no event later than the point at which it is communicated to the Respondent) and the Respondent.

(If protective measures have already been implemented pursuant to Section 5.02(a), the Title IX Coordinator will evaluate whether they should continue to be provided and whether other interim measures, such as those listed above, should also be implemented.)

- (b) Respondent's Initial Meeting with the Title IX Coordinator.** As soon as is reasonably practicable after the Title IX Coordinator's initial meeting with the Complainant, the Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Title IX Coordinator will, as applicable:
- (i)** provide the Respondent, in writing, information consistent with state and federal privacy laws and, if applicable, the Complainant's request for heightened confidentiality, that is sufficient to allow him or her to respond to the substance of the allegation, including, if possible, the name of the Complainant and the date, location, and nature of the alleged Sexual Misconduct;
  - (ii)** provide the Respondent a copy of this Policy;
  - (iii)** explain the steps involved in a Sexual Misconduct investigation;
  - (iv)** discuss confidentiality standards and concerns with the Respondent;
  - (v)** discuss non-Retaliation requirements with the Respondent;
  - (vi)** inform the Respondent of any interim measures already determined and to be provided to the Complainant that directly affect the Respondent

(e.g., changing the Respondent's class schedule, or moving the Respondent to an alternate residence hall);

- (vii) refer the Respondent to Health and Counseling Services or other resources, as appropriate; and
- (viii) discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes. The College may implement such measures if requested and/or appropriate, and reasonably available, whether a Complaint has been filed (with either campus officials or law enforcement agencies) or whether an investigation has commenced (by either campus officials or law enforcement agencies).

#### **Section 5.04 STEP 4: The Investigation**

- (a) **Effect of Corollary Criminal Investigation.** The College's investigation may be delayed temporarily while criminal investigators are gathering evidence. In the event of such a delay, the College may take interim measures when necessary to protect the Complainant and/or the College community.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate a matter is determinative of whether Sexual Misconduct, for the purposes of this Policy, has occurred.

- (b) **The Title IX Coordinator's Initial Determination.** The Title IX Coordinator will promptly appoint an Investigator, will share his or her name and contact information with the Complainant and the Respondent, and will forward the Complaint to the Investigator *unless* it is clear on its face that *no* reasonable grounds exist for believing that the conduct at issue constitutes Sexual Misconduct.

Within three business days of such appointment, the Investigator, the Complainant, or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such Investigator to the matter. The Title IX Coordinator will carefully consider such statements and will assign a different individual as Investigator if it is determined that a material conflict of interest exists.

In the event that the Complaint was made by a Third-party Reporter, the Title IX Coordinator will also consider the following factors in determining whether it is reasonable to assign Investigators to investigate the Complaint:

- (i) The source and nature of the information,
- (ii) The seriousness of the alleged incident,
- (iii) The specificity of the information,

- (iv) The objectivity and credibility of the source of the information,
- (v) Whether the individuals allegedly subjected to the Sexual Misconduct can be identified, and
- (vi) Whether those individuals wish to pursue the matter.

In the event that the Title IX Coordinator determines that an investigation of the Complaint is not warranted, he or she will close the Complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

- (c) **The Investigator's Activities.** Upon receipt of the Complaint, the Investigator will promptly begin the investigation, taking such steps as:
  - (i) Conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
  - (ii) Visiting, inspecting, and taking or reviewing photographs at relevant sites where applicable; and
  - (iii) Collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies) where applicable.

Throughout the investigation, the Investigator will remain neutral.

The Investigator should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this Policy, of any Personally Identifiable Information contained in the Complaint, the Investigative Report, and/or any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of the Complaint.

- (d) **The Investigator's Report.** The Investigator will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question (the "Investigative Report"). The Investigator will share the Investigative Report with the Title IX Coordinator, who will make it (concurrently) available to the Complainant and to the Respondent to review, after redacting from it information that would not be admissible at a hearing on the matter pursuant to this Policy. The Complainant and the Respondent may not make photocopies of the Investigative Report.

All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the

Complaint); the Investigative Report may only be disclosed as is contemplated by this Policy.

**Section 5.05 STEP 5: The Title IX Coordinator's Evaluation of the Investigative Report**

The Title IX Coordinator will evaluate the Investigative Report and will direct that the Complaint will proceed to adjudication according to the procedures set forth in Article VI below *unless* it is clear from the Investigative Report that no reasonable grounds exist for believing that the conduct at issue constitutes Sexual Misconduct.

The Title IX Coordinator will specify which allegations and, if applicable, which other, related alleged misconduct, will go forward for resolution under this Policy.

If the Title IX Coordinator finds that it is clear from the Investigative Report that no reasonable grounds exist to believe that the conduct at issue constitutes Sexual Misconduct, then the Title IX Coordinator will close the Complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

## ARTICLE VI. RESOLUTION

### Section 6.01 Respondent's Acknowledge of Responsibility Prior to Hearing

At any time prior to the date of the hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Title IX Coordinator will propose sanction(s) for the Respondent. If the Complainant and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party.

If either the Complainant or the Respondent objects to such proposed sanction(s), then a Hearing Board will convene for the exclusive purpose of determining a sanction in accordance with Section 6.02(c)(ii). The sanction(s) determination may be subject to appeal pursuant to Article VII.

### Section 6.02 The Resolution Process

A Hearing Board will conduct a hearing in which it will interview and question the Complainant, the Respondent, and any witnesses or other third parties whose testimony the Hearing Board deems relevant. The Title IX Coordinator is not required to attend the hearing but may attend and observe the hearing if he or she deems it appropriate.

#### (a) The Hearing Board.

- (i) **Composition of the Hearing Board.** The College's Committee on Discipline and Appeals will constitute the "Hearing Board," provided, however, that student members of the College Committee on Discipline and Appeals will not serve on the Hearing Board. The chair of the Committee on Discipline and Appeals will be the Chair of the Hearing Board. The Title IX Coordinator will share the Complaint and the Investigative Report (redacted, if applicable, pursuant to Section 5.04(d)) with the Hearing Board and, if only a portion of the misconduct alleged in the Complaint justifies continuing to the hearing process, the Title IX Coordinator will specify which part(s) of the alleged misconduct will be the subject of the hearing.
- (ii) **Notice of the Composition of the Hearing Board.** The Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent setting forth the names of the individuals serving on and chairing the Hearing Board. If only a portion of the alleged misconduct justifies continuing to the hearing process, the Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearing.

The parties may challenge the participation of any member of the Hearing Board by submitting a written objection to the Title IX Coordinator within three business days of receipt of the notice of the composition of the Hearing Board. Such objection must state the

specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine, in consultation with the Vice President for Student Services and Dean of Students and/or the Senior Vice President for Finance and Operations, as appropriate, whether to alter the composition of the Hearing Board. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Board. Any changes in the composition of the Hearing Board will be provided in writing to both parties prior to the date of the hearing.

**(b) Hearing Policies and Procedures**

- (i) Submission of Written Materials by the Parties.** Within five business days of receipt of the notice of composition of the Hearing Board, the Complainant and the Respondent may provide the Title IX Coordinator with (1) a list of witnesses, if any, that they propose that the Hearing Board call and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and (2) a written statement of position. The Title IX Coordinator will share such information with the Hearing Board.
- (ii) Notice of the Hearing.** Not less than five business days but not more than ten business days after delivery of notice of the composition of the Hearing Board to the parties, the Hearing Board will provide a separate notice to each of the Complainant, the Respondent, and any witnesses or other third parties whose testimony the Hearing Board deems relevant, requesting such individual(s) to appear before the Hearing Board. The notice should set forth, as applicable, the date, time, and location of the hearing (which ordinarily will be no more than 20 business days following the conclusion of the investigation.) In its notices to the Complainant and the Respondent, the Hearing Board will provide the names of the witnesses or other third parties that the Hearing Board plans to call.
- (iii) Failure to Appear.** If the Complainant and/or the Respondent fails to appear before the Hearing Board if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Board will proceed to determine the resolution of the Complaint.
- (iv) No Contact Prior to the Hearing.** The Complainant and the Respondent may not contact each other outside of the hearing, even to discuss the hearing.

(v) **Counsel and Support Persons.**

- 1) **Legal Counsel.** The College may seek advice from counsel at any time (although such counsel will not be present during the hearing).
- 2) **Advisors.** As provided in Section 4.03, both the Complainant and the Respondent may have an advisor present to support and assist them during the hearing.
- 3) **Other Advisors.** Absent accommodation for disability and except as set forth in this section, the parties may not be accompanied by any other individual during the hearing process.

(vi) **Evidentiary Matters.** The Complainant and the Respondent will have an equal opportunity to present evidence. Formal rules of evidence will not be observed during the hearing.

Evidence of the past sexual histories of the Complainant and the Respondent will not be permitted at the hearing, with the following exceptions:

- 1) evidence is permitted to show that the Complainant has in the past been formally disciplined by the College for falsely filing Complaints alleging Sexual Misconduct,
- 2) evidence is permitted to show that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the College for Sexual Misconduct, and
- 3) evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally charged with a violation of the Policy with respect to such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Misconduct at issue before the Hearing Board, provided that (1) the Respondent has not been found "not responsible" by the College in a proceeding related to such sexual activity and (2) the Hearing Board has found both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the Hearing Board to suggest a pattern of behavior.

(vii) **Conduct of the Hearing.**

- 1) **Generally.** The hearing will be conducted in an inquisitorial manner, which means that the Hearing Board will be responsible for asking questions of the parties and the witnesses and

developing evidence through testimony. The Chair of the Hearing Board will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony). Members of the College community are expected to provide truthful testimony.

- 2) **Testimony.** The Respondent and/or the Complainant may choose not to testify before the Hearing Board; however, the affirmative exercise of that option will not preclude the Hearing Board from making a determination regarding the Complaint.
- 3) **Remote Testimony.** Upon timely request, the College may provide for remote testimony in appropriate circumstances. The Title IX Coordinator has the sole discretion to determine whether remote testimony will be made available.
- 4) **Recording.** The College may record the hearing. This recording will be the property of the College. The Presidential Appeals Committee may use the recording as part of the appeal process. At the conclusion of the appeal process, the recording will be destroyed.

(c) **Outcome.**

- (i) **The Decision of the Hearing Board.** Following the conclusion of the hearing, the Hearing Board will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties' written statements, if any, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed Sexual Misconduct. The Hearing Board will prepare written findings of fact in support of its decision and will render a finding of "Responsible" or "Not Responsible." If the Respondent is found "Responsible," the Hearing Board will specify the specific type(s) of Sexual Misconduct, if any, for which the Respondent is found "Responsible" (for example, Sexual Assault, Stalking, etc.).
- (ii) **Sanctions.** If the Hearing Board renders a finding of "Responsible," it will determine appropriate sanctions to be imposed on the Respondent.
  - 1) **Generally.** Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for Sexual Misconduct, or both. Sanctions may include, without limitation:
    - a) For students: mandated counseling, training, suspension or expulsion from the College, disciplinary probation,

expulsion from campus housing, loss of privileges, and/or other educational sanctions as are deemed appropriate by the Hearing Board.

- b)** For employees: mandated counseling, training, warning, written reprimand, withholding of a promotion or pay increase, reassigning employment, temporary suspension without pay, compensation adjustment, terminating employment, and/or other employment sanctions as are deemed appropriate by the Hearing Board.

In determining sanctions, the Hearing Board will give consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. The Hearing Board will forward its determinations regarding sanctions to the Title IX Coordinator.

- 2) Implementation of Sanctions.** Sanctions imposed are not effective until the resolution of any timely appeal pursuant to Article VII. However, if it is advisable in order to protect the welfare of the Complainant or the College community, the Hearing Board may recommend and/or the Title IX Coordinator may determine that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

- (iii) Final Outcome Letter.** Within ten calendar days following the conclusion of the hearing (or such longer time as the Chair of the Hearing Board may for good cause determine), the Hearing Board will issue a written decision letter (the "Final Outcome Letter") concurrently to the Respondent and the Complainant.

For employee and third-party Respondents, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, and (3) the sanctions imposed on the Respondent, if any, and (4) the rationale for the finding and the sanctions. Where appropriate, the Final Outcome Letter may set forth names of other individuals, such as a victim or witness, if such other individuals provide their written consent to such inclusion.

For student Respondents alleged to have committed Sexual Assault, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, (3) the rationale for the finding, and (4) the

sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, its duration, and the rationale for such action), and where appropriate, it may set forth names of other individuals, such as a victim or witness, if such other individuals provide their written consent to such inclusion.

For Student Respondents alleged to have committed any other form of Sexual Misconduct, the Final Outcome Letter will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, (3) the rationale for the finding, and (4) the sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, its duration, and the rationale for such action). To the extent that the sanctions imposed on the Respondent do not constitute part of the Complainant's Education Record, then such information will be redacted from the version of the Final Outcome Letter that is provided to the Complainant.

- (iv) **Final Accommodations and Corrective Actions.** In addition to any sanctions imposed on the Respondent, promptly following the conclusion of the hearing(s) and the Hearing Board's issuance of the Final Outcome Letter, the Title IX Coordinator will determine the final accommodations to be provided to the Complainant, if any, and the Title IX Coordinator will communicate such decision to the Complainant, and, to the extent that it affects him or her, to the Respondent. Such accommodations may include, but are not limited to, those listed in Section 5.03(a)(viii) of this Policy.

The Title IX Coordinator will also take steps, where necessary, to prevent the further harassment of or Retaliation against the Complainant or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing resources related to Sexual Misconduct or other counseling. The Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent.

Furthermore, the Title IX Coordinator will take prompt corrective action if the Complainant experiences Retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant or other members of the College community. In appropriate cases (such as those involving Sexual Harassment), the Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created. In taking the above-outlined steps, the Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant.

- (d) **Confidentiality and Disclosure.** In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public.

Documents prepared in anticipation of the hearing (including the Complaint, the Investigative Report, the notice of hearing, and the pre-hearing submissions referenced above) and documents, testimony, or other information introduced at the hearing may not be disclosed, except as may be required or authorized by law.

If it is determined that the Respondent committed Sexual Assault, College policy does not prohibit the further disclosure of the Final Outcome Letter by either the Complainant or the Respondent.

## ARTICLE VII. APPEALS

### **Section 7.01 Appealing Interim Disciplinary Sanctions.**

Interim disciplinary measures for employees imposed under Section 5.02(b) may be appealed to the Senior Vice President for Finance and Operations or his or her designee (available by phone at 864-379-8812 and located in Belk Hall).

Interim disciplinary measures for students imposed under Section 5.02(b) may be appealed to the Vice President for Student Services and Dean of Students or his or her designee (available by phone at 864-379-8701 and located in Watkins Student Center).

The decisions of the Senior Vice President for Finance and Operations and the Vice President for Student Services and Dean of Students, respectively, will be final.

### **Section 7.02 Appealing the Closure of a Complaint Prior to Adjudication**

The Complainant and/or the Respondent may appeal the Title IX Coordinator's decision to close the Complaint by submitting a written appeal to the President of the College (and providing a copy of the appeal to the Title IX Coordinator) within ten business days of receipt of the decision. The Title IX Coordinator will promptly inform the other party of the appeal.

Within ten business days (or more, if circumstances warrant) following receipt of the appeal, the President or his or her designee will make a determination as to whether the Complaint should proceed to adjudication or the Title IX Coordinator's decision to close the Complaint should stand. The President or his or her designee will notify the Complainant and the Respondent concurrently of his or her decision.

### **Section 7.03 Appealing the Results of Adjudication**

The Complainant and/or the Respondent may appeal the decision of the Hearing Board and/or the sanction imposed on the Respondent to the College's Presidential Appeals Committee. The decision of the Hearing Board and the sanction imposed on the Respondent may, if desired, be appealed simultaneously.

Except in the case of interim disciplinary measures instituted pursuant to Section 5.02(b) above, the Respondent's status will remain unchanged until the appellate process is final.

#### **(a) Grounds.**

**(i) Appealing a Finding of "Responsible" or "Not Responsible."** The Hearing Board's finding of responsibility (i.e., whether the Respondent was found "Responsible" or "Not Responsible") may be appealed on the following grounds:

- 1)** Procedural errors during the hearing substantially affected the outcome of the hearing.

- 2) There was demonstrated prejudice against any party by any member of the Hearing Board. Such prejudice must be evidenced by a conflict of interest, bias, pressure, or influence that precluded a fair and impartial hearing.
- 3) There is newly discovered, relevant information that was not reasonably available at the time of the hearing and that would have substantially affected the outcome of the hearing.

(ii) **Appealing Sanctions Imposed on the Respondent.** The sanctions imposed on the Respondent may be appealed on grounds that the severity of the sanction imposed is extraordinarily disproportionate to the gravity of the Sexual Misconduct for which the Respondent was found responsible.

(b) **Process.**

- (i) **Filing an Appeal.** Appeals must be made in writing to the Title IX Coordinator within fourteen business days from the date of the Final Outcome Letter. The appeal must state the reason(s) for the appeal (from among those listed above), the facts supporting the appeal, and the recommended way to correct the error. The Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) and Presidential Appeals Committee of the filing of the appeal.
- (ii) **Initial File Review.** The Presidential Appeals Committee will begin by reviewing the Complaint file (which includes but is not limited to the Complaint, the Investigative Report, the parties' written statements, and recordings of the hearing). The Presidential Appeals Committee may make an official decision based solely on this review.
- (iii) **Additional Information.** If the Presidential Appeals Committee determines a need for additional information, it may request written materials from the Complainant and the Respondent.
- (iv) **Decision.**
  - 1) **Regarding Responsibility.** If the Hearing Board issued a finding of "Responsible," the Presidential Appeals Committee may determine (i) that the finding be affirmed or reversed, or (ii) that a new hearing be conducted. If the Hearing Board issued a finding of "Not Responsible," the Presidential Appeals Committee may determine (i) that the finding be affirmed, or (ii) that a new hearing be conducted. The Presidential Appeals Committee will prepare written findings of fact in support of its decision, which will not be subject to further appeal.

- 2) **Regarding Sanctions.** The Presidential Appeals Committee may recommend that the Hearing Board's determination regarding sanctions be affirmed or overturned. If the Presidential Appeals Committee determines that the sanctioning decision of the Hearing Board should be overturned, the Presidential Appeals Committee will find either (1) the final sanctions to be imposed on the Respondent, which will not be subject to further appeal, or (2) that another hearing will be convened before the Hearing Board for the sole purpose of considering sanctions, in which case the final sanctions set by the Hearing Board and approved by the Title IX Coordinator will not be subject to further appeal. The Presidential Appeals Committee will prepare written findings of fact in support of its decision.
- (v) **Notification.** Within 15 business days from the later of the date of the initial file review, the Presidential Appeals Committee's receipt of additional written materials (or longer, if reasonably necessary), the Presidential Appeals Committee (or his or her designee) will communicate its final decision concurrently to the Complainant and the Respondent.

**IMPORTANT INFORMATION FOR  
VICTIMS OF SEXUAL MISCONDUCT**

*If you or someone you know may have been a victim of Sexual Misconduct,  
you are strongly encouraged to seek assistance.*

**ASSISTANCE CAN BE OBTAINED 24/7 BY DIALING 911.**

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The following are **College resources** available to victims of Sexual Misconduct:

**Erskine College Police Department**

Erskine College Police Department Building  
(864) 370-8869  
available from 9:00 p.m. to 5:00 a.m.,  
7 days per week

*During business hours (8:00 a.m. to 5:00 p.m., Monday through Friday), you are strongly encouraged to contact the College's Title IX Coordinator:*

**Rebecca Magee, Title IX Coordinator**

Assistant Athletic Director for Insurance and Compliance  
Galloway 208  
(864) 379-8859  
magee@erskine.edu

*[Information continues on the following page.]*

The following are **community resources** available to victims of Sexual Misconduct:

**Sexual Violence and Abuse Agencies:**

**Beyond Abuse**

<http://beyondabuse.info/>  
116 East Alexander Avenue  
Greenwood, SC 29646  
(864) 227-1623

**Foothills Alliance**

<http://www.foothillsalliance.org/>  
(864) 231-7273  
216 E. Calhoun Street  
Anderson, SC 29621

**Medical Providers:**

**Abbeville Area Medical Center**

<http://www.abbevilleareamc.com/>  
420 Thomson Circle  
Abbeville, SC 29620  
(864) 366-5011

**Self Regional Healthcare**

<http://www.selfregional.org/>  
1325 Spring Street  
Greenwood, SC 29646  
(864) 725-4111

The following are **federal resources** available to victims of Sexual Misconduct:

**Office for Civil Rights (“OCR”)**

Washington DC (Metro)  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1475  
(202) 453-6020  
(202) 453-6021 (fax)  
(800) 877-8339 (TDD)  
OCR.DC@ed.gov

**Not Alone**

(an official website of the United States Government)  
*Information for students, schools, and anyone interested in finding resources on how to respond to and prevent sexual assault on college and university campuses and in our schools.*  
<https://www.notalone.gov>

*[Policy continues on the following page.]*

