

**ERSKINE COLLEGE**  
**Interim Equal Opportunity, Anti-Harassment, and Nondiscrimination Policy**



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**ARTICLE I. Introduction**

**Section 1.01 Policy Overview**

As a Christian academic community, Erskine College (“the College”) is committed to providing an educational and work environment, including programs and activities, free from discrimination, harassment, and retaliation. The College seeks to treat all persons justly with grace, dignity, respect, and compassion in the Spirit of Christ.

To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed this Interim Equal Opportunity, Anti-Harassment, and Nondiscrimination Policy (the “Policy”) with internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. The grievance process set forth in this Policy strives to balance the rights of the parties during what is often a difficult time for all those involved.

This Policy is currently being closely reviewed by the College and its Board of Trustees, and any modifications will be included in the current version of the Policy published online by the College. See Section 1.06 Policy Revisions, for additional information regarding revisions to this Policy.

**Section 1.02 Administrative Contacts**

Individuals who would like to submit a formal complaint or a report of an alleged violation of this Policy or who have questions about the application of this Policy should contact the College’s Title IX Coordinator:

**Title IX Coordinator:** <sup>1</sup>

Buck Brown  
Belk Hall 238  
2 Washington Street  
Erskine College, Due West, SC  
Telephone:  
Email: brown@erskine.edu

864-379-8805

Employees may also report an alleged violation of this Policy to or inquire of Human Resources.

The College has determined that the following administrators are Officials with Authority<sup>2</sup> to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Coordinator listed above, these Officials with Authority listed below may accept a report, which they are then responsible for submitting promptly to the Title IX Coordinator:

**President**

Dr. Robert E. Gustafson  
Belk Hall: 331  
Erskine College, Due West, SC  
Telephone: 864-379-8833  
Email: gustafson@erskine.edu

**Erskine College Provost**

Dr. Tom Hellams  
Belk Hall: 307  
Erskine College, Due West, SC  
Telephone: 864-379-8872  
Email: hellams@erskine.edu

**Erskine Seminary Provost**

Dr. Michael A. Milton  
Bowie Divinity Hall  
210 South Main Street  
Erskine College, Due West, SC  
Telephone: 864-379-6596

**Director of Human Resources**

Barbara Peck  
Belk Hall: 239  
Erskine College, Due West, SC

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<sup>1</sup> Anywhere this Policy indicates "Title IX Coordinator" as performing a specific role in procedures set forth herein, the College may substitute a trained designee, such as a College administrator, or external individual.

<sup>2</sup> "Official with Authority" and other terms used throughout this Policy have specific meanings as defined in Exhibit A.

Telephone: (864) 379-6546  
Email: peck@erskine.edu

**504/ADA Coordinator**

Shane Bradley  
Belk Hall: 2019  
Erskine College, Due West, SC  
Telephone: 864-379-6607  
Email: bradley@erskine.edu

All Erskine College employees (including student employees), with the exception of Confidential Resources, are Mandated Reporters who are required to immediately report to the Title IX Coordinator all known details of a report of a potential violation of this Policy during the course of employment.

Individuals may inquire externally to the Department of Education’s Office of Civil Rights (OCR) at the following:

Office for Civil Rights  
U.S. Department of Health and Human Services  
400 Maryland Avenue, SW  
Washington, DC 20202-1475  
Phone: 202-453-6020 Fax: 202-453-6021  
Email: [ocr.dc@ed.gov](mailto:ocr.dc@ed.gov)

Employees and applicants for employment may also inquire externally to the United States Equal Employment Opportunity Commission at the following:

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
Phone: 202-663-4900  
Email: [info@eoc.gov](mailto:info@eoc.gov)

**Section 1.03 Scope of Policy**

**a. Scope**

Erskine College prohibits all forms of discrimination. Discrimination can involve exclusion from activities, such as admission, athletics, or employment. Discrimination may also take the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using the College’s grievance process, as detailed below.

**b. Application**

When the Respondent is a member of the Erskine community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Erskine community.

This community includes, but is not limited to, students,<sup>3</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### **c. Jurisdiction**

Pursuant to Title IX, this Policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College's recognized student organizations.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College's educational program. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator or their designee determines that the conduct affects a substantial College interest.

Regardless of where the conduct occurred, the College will review all reports to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is not a current student or employee, the College will use its discretion to determine appropriate measures to be taken, which may include investigating, assisting the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement or Campus Police if the individual would like to file a police report.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

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<sup>3</sup> For the purpose of this policy, "student" means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College.

Regardless of the status of the Respondent, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

#### **Section 1.04 No Time Limit on Reporting**

A Report of discrimination may be filed at any time, regardless of the length of time since the conduct was alleged to have occurred. However, the College strongly encourages individuals to file reports promptly and preserve evidence. A delay in filing a report 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.

When a report is significantly impacted by the passage of time (including, but not limited to, change of policy), the Title IX Coordinator has discretion as to how to address the report, which may be to document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

The Title IX Coordinator has the discretion to re-open a case at any time should germane new evidence become available that would significantly impact the outcome of the case.

#### **Section 1.05 Policy Oversight and Independence**

The Title IX Coordinator oversees the implementation of this policy and has the primary responsibility for coordinating the College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this Policy.

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case or Complainants and/or Respondents, generally.

To raise any concern involving bias or conflicts of interest, discrimination or a violation of this Policy by the Title IX Coordinator, contact the Provost at [hellams@erskine.edu](mailto:hellams@erskine.edu) or the Non-discrimination Coordinator at [brown@erskine.edu](mailto:brown@erskine.edu). Concerns related to the implementation of this Policy or regarding bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator, as indicated during the resolution processes.

#### **Section 1.06 Policy Revisions**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the existing protection of applicable state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August, 2020.

This Policy was adapted, in part, from the ATIXA 2020 One Policy, Two Procedures Model. Use and adaptation of this model with citation to ATIXA is permitted through a limited license to Erskine College. All other rights reserved. ©2020. ATIXA

## **ARTICLE II. Nondiscrimination Policy**

### **Section 2.01 Policy on Nondiscrimination**

Erskine College complies with all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

The College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race,
- Hearing status,
- Color,
- Sex,<sup>4</sup>
- Pregnancy,
- Political affiliation,
- Ethnicity,
- National origin (including ancestry),
- Citizenship status,
- Physical or mental disability (including perceived disability),
- Age,
- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics, and
- Domestic violence victim status.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Erskine community whose acts deny, deprive, or limit the educational, employment, social or residential access, benefits, and/or opportunities of any member of the Erskine community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of this Policy.

When reported to the College, any such discrimination will be promptly and fairly addressed and remedied according to the appropriate process described below.

### **Section 2.02 Individuals with Disabilities**

The College is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit

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<sup>4</sup> Discrimination on the basis of an individual's sex is prohibited under this Policy. This prohibition must be interpreted consistent with the Christ-centered mission of the College. The Employee Resource Handbook informs this interpretation for faculty and staff.



discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The College's designated ADA/504 Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

#### **a. Students with Disabilities**

The College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the College.

All accommodations are made on an individualized basis. Student requests for accommodation must be made to the ADA/504 Coordinator, who coordinates services for students with disabilities.

The ADA/504 Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

#### **b. Employees with Disabilities**

Pursuant to the ADA, the College will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the College.

An employee with a disability is responsible for submitting a request for an accommodation to the Director of Human Resources and providing necessary documentation. The Director of Human Resources or a designated Human Resources representative will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

### **ARTICLE III. Prohibited Conduct**

Discrimination, harassment, retaliation, or any other conduct prohibited by the sections in this Article III are referred to collectively in this policy as "Prohibited Conduct."

#### **Section 3.01 Discriminatory Harassment**

Students and employees are entitled to an employment and educational environment that is free of discriminatory harassment. Discriminatory harassment constitutes a form of discrimination that is prohibited by this Policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy (see Section 2.01 Policy on Nondiscrimination above) or law.

Erskine College does not tolerate discriminatory harassment of any employee, student, visitor, or guests. The College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A **hostile environment** is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the resolution procedures below.

### **Section 3.02 Sexual Harassment**

Sexual Harassment is a specific form of discriminatory harassment that is prohibited by policy and federal and state law.

Erskine College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual Harassment includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following definitions, in A-F of this section:

- A. Hostile Environment Sexual Harassment:** Unwelcome conduct on the basis of sex that is so severe, pervasive and objectively offensive, that it effectively denies a person equal access to the College’s education program or activity.<sup>5</sup>
- B. Quid Pro Quo Sexual Harassment:** An employee of the College conditions the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.
- C. Sexual Assault:**  
Sexual assault is defined as any of the following offenses:
  - 1. Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
  - 2. Forcible Rape: 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 Complainant.

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<sup>5</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

3. **Forcible Sodomy**: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
4. **Sexual Assault with an Object**: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
5. **Forcible Fondling**: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
6. **Sex Offenses, Non-forcible**:
  - a. **Incest**: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by South Carolina law.
  - b. **Statutory Rape**: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16.

**D. Dating Violence:**

1. Dating violence is defined as violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - a. 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.
  - b. For the purposes of this definition—
    - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - ii. Dating violence does not include acts covered under the definition of domestic violence.

**E. Domestic Violence:**

1. Domestic violence is defined as violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant,
  - a. by a person with whom the Complainant shares a child in common, or
  - b. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - c. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of South Carolina, or
  - d. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of South Carolina.
2. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**F. Stalking:**

1. Stalking is defined as engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
2. For the purposes of this definition—

- a. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

College Employees and Students are expected to comply with the notice requirements of the EXHIBIT F: Unethical Relationships Policy, which is in place to protect members of the Erskine community from Sexual Harassment.

Acts of Sexual Harassment may be committed by or against any person regardless of the sex, sexual orientation, and/or gender identity of those involved.

Erskine College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

**G. Force, Coercion, Consent, and Incapacitation:** As used in the offenses above, the following definitions and understandings apply:<sup>6</sup>

1. **Force:** The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

2. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
3. **Consent:** Knowing and voluntary clear permission by word or action to engage in sexual activity.
  - a. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
  - b. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
  - c. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. An individual can imply that another

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<sup>6</sup> South Carolina definitions applied in criminal prosecutions for sex offenses may differ from the definitions used by the College to address policy violations. See Exhibit G for complete definitions of VAWA crimes under South Carolina Law.

- person consents to reasonable reciprocation, for example, being kissed back after initiating a kiss.
- d. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
  - e. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
  - f. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
  - g. Consent in relationships must also be considered in context. For example, when parties consent to BDSM,<sup>7</sup> non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the planned activity and thus consensual, so the College’s evaluation of communication in such situations should be guided by reasonableness, rather than strict adherence to policy that assumes conventional relationships as a default.
4. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.
- a. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.
  - b. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
  - c. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
  - d. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **Section 3.03 Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the College additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class, as defined in Section 2.01 Policy on Nondiscrimination.

- A. Discrimination,** defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

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<sup>7</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

**B. Sexual Exploitation**, defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

1. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
2. Invasion of sexual privacy
3. Taking pictures, video, or audio recording of another in a sexual act, or in any other
4. sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
5. Prostituting another person
6. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
8. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
9. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
10. Knowingly soliciting a minor for sexual activity
11. Engaging in sex trafficking
12. Creation, possession, or dissemination of child pornography

**C. Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in Another.

**D. Hazing**, defined as any conduct likely to cause physical or psychological harm or social ostracism to any person within the Erskine community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity. See also the Student Handbook and S.C. Code § 16-3-510 (2013).

**E. Bullying**, defined as:

1. Repeated and/or severe
2. Aggressive behavior
3. Likely to intimidate or intentionally hurt, control, or diminish another person, physically
4. and/or mentally

**F. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.**

Violation of any other College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

### **Section 3.04 Retaliation**

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the resolution processes, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Erskine College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of the Erskine community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a resolution proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **Section 3.05 Related Misconduct**

Alleged misconduct that is related to the Prohibited Conduct at issue, even if such related misconduct is not, when standing alone, governed by this Policy, may be adjudicated under this Policy. Similarly, complaints of Retaliation, providing false information, and counterclaims by a Respondent may be adjudicated in the same proceeding as the original complaint or in a separate proceeding. Determinations regarding adjudication of related misconduct will be made by the Title IX Coordinator and appropriate administrators.

### **Section 3.06 Harassment and Academic Freedom**

Academic freedom provides the right to both faculty members and students to engage in intellectual debate in and outside the classroom without fear of retaliation or censorship.

This Policy is not intended to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom. Members of the Erskine community are prohibited from retaliating against a person who, in exercising the right of academic freedom, voice different, adverse, or opposing views.

When speech or conduct is protected by academic freedom, it will not be considered a violation of this Policy, though remedies may be offered to those impacted. Speech or conduct falls outside of the

protection of academic freedom when such speech or conduct arises to any conduct described and prohibited by this Policy.

### **Section 3.07 Offensive Conduct that does not Violate this Policy**

The College reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under this Policy, but may be addressed through respectful conversation, remedial actions, education, mediated resolution, and/or informal resolution mechanisms.

For assistance with mediation and other informal resolution techniques and approaches, contact the Title IX Coordinator. Employees may also contact the Director of Human Resources.

### **Section 3.08 Prohibition on Providing False Information or Interfering with an Investigation**

Any individual who knowingly files a false complaint (as opposed to allegations which, even if erroneous, are made in good faith) under this Policy or who interferes with an investigation may be subject to disciplinary action. Interference with an investigation may include, but is not limited to, the following:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the investigation; or
- Providing false or misleading information to College officials who are involved in the investigation and resolution of a complaint or encouraging others to do so.

### **Section 3.09 Amnesty for Reporting and Witness Information**

The College considers the reporting and adjudication of conduct prohibited by this Policy to be of paramount importance. In order to encourage reporting of conduct prohibited under this policy and cooperate in an investigation, the College will not pursue disciplinary action against students for disclosure of minor policy violations – such as personal underage alcohol consumption – related to the incident where the disclosure is made in connection with a good faith report or investigation of prohibited conduct and the activity did not place the health or safety of any other person at risk. The College may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use. Amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

## **ARTICLE IV. PRIVACY, CONFIDENTIAL RESOURCES, AND REPORTING**

The College encourages anyone who has experienced discrimination 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 options available to them so that they can make informed choices about where to turn should they be subjected to discrimination.

### **Section 4.01 Privacy of Reports**



The College will make every feasible effort to preserve the privacy<sup>8</sup> of reports. The College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), as required by law or regulation, or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or resolution proceeding arising under these policies and procedures.

To preserve the parties' rights and privacy, only a small group of officials who need to know will typically be informed of the report or formal complaint. Information will be shared only as appropriate and necessary in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar conduct, and address the effects of the conduct. The College reserves the right to designate which College officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

In addition, as described in Section 4.02 Mandated Reporters, Confidential Resources, and Reporting Requirements, the College may be required by state or federal law to inform law enforcement of certain incidents.

#### **Section 4.02 Mandated Reporters, Confidential Resources, and Reporting Requirements**

All College employees (faculty, staff, and administrators), with the exception of those designated as Confidential Resources, are considered Mandated Reporters, expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

It is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the College for a Complainant or third-party (including parents/guardians when appropriate):

##### **a. Confidential Resources**

If an individual would like the details of an incident to be kept confidential, they may speak with:

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<sup>8</sup> For the purpose of this Policy, *privacy* means that information related to a report or formal complaint will be shared with a limited number of College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. *Confidentiality*, as explained in Section 4.03, means information will not be shared by a Confidential Resources without permission, except when as required by law.

- On-campus licensed professional counselors and staff, and all College Counseling Center staff
- On-campus health service providers and staff
- College Chaplain(s) working within the scope of their licensure or ordination
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger, abuse or neglect of a minor (under the age of 18) or individual with a disability, or when required to disclose by law or court order.

Note that people who serve more than one role at the College (e.g. chaplain and faculty member) will be a Confidential Resource when serving in the role designated as confidential (e.g. chaplain) but will be a Mandated Reporter when serving in a role designated as a Mandated Reporter role (e.g. faculty member).

College employees who are Confidential Resources will timely submit anonymous statistical information for Clery Act purposes (which does not include the Complainant's name or identifying information) unless they believe it would be harmful to their client or patient.

Confidential Resources are not Mandated Reporters, and therefore are not required to (and will not, absent direction from the disclosing individual) submit reports to the Title IX Coordinator. For purposes of clarity, all other College employees who are not Confidential Resources are Mandated Reporters required to report discrimination, harassment and retaliation that violates this Policy. Communications made to Mandated Reporters are not entitled to the same confidentiality protections as those made to Confidential Resources.

Confidential Resources will assist both parties in receiving necessary support. Individuals may also seek assistance confidentially from resources off campus, including licensed professional counselors, rape crisis counselors, domestic violence resources, local or state assistance agencies, clergy, and attorneys. See Exhibit C for a list of resources.

A Complainant who first speaks with a Confidential Resource may later decide to file a formal complaint with the College or report to local law enforcement and thus have the report fully investigated.

### **b. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

### **c. Mandated Reporters and Formal Notice/Complaints**

All Mandated Reporters must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Mandated Reporters must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College. Supportive measures may be offered as the result of such disclosures without formal College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **Section 4.03 Request by Complainant not to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator may consult with the appropriate administrators but has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX

Coordinator may sign a formal complaint to initiate a resolution process upon completion of an appropriate risk assessment.

- The Title IX Coordinator's decision should be based on results of a risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.
- A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.
- The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a resolution fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. When the Complainant chooses not to participate, the Title IX Coordinator may decide to appoint an Advisor as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the College's ability to remedy and respond to a report may be limited if the Complainant does not want the College to proceed with an investigation and/or resolution process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests no formal resolution and the circumstances allow the College to honor that request, the College will offer other options, including supportive measures and remedies to the Complainant and the community but will not otherwise take formal action.

If the Complainant elects to take no action and the College can honor the request, the Complainant can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College and to have the incidents investigated and properly resolved through these procedures.

## **ARTICLE V. HOW TO REPORT PROHIBITED CONDUCT**

For information about seeking medical assistance and emotional support as well as important contact information for local law enforcement agencies, hospitals, and other resources, see EXHIBIT C: Campus and Community Resources, attached to this Policy.

Because conduct prohibited by this Policy may in some instances constitute both a violation of College policy and criminal activity, and because the College processes are not a substitute for instituting legal action, the College encourages individuals to report to College officials and to law enforcement authorities, where appropriate. See Section 1.02 Administrative Contacts for information needed to contact the Title IX Coordinator, OCR, or the EEOC.

Individuals have the option not to report to campus officials or to law enforcement authorities. The College respects the individual's decision in regard to reporting; however, if the College receives a report, it may have to proceed subject to provisions outlined in Section 4.04 of this Policy.

### **Section 5.01 Reporting to the College**

Reports of discrimination, harassment, and/or retaliation may be made using any of the following options:

- File a report with or give verbal or written notice to the Title IX Coordinator or an Official with Authority. Reports can be made at any time via the phone numbers or email addresses listed in Section 1.02.
- Report online using the Incident Reporting Form, which can be found on the LU Portal and the College's Title IX webpage.
- College employees may submit a report of discrimination or harassment to the Title IX Coordinator or the Director of Human Resources.

A formal complaint is a document that is filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by phone, by mail or by email, using the contact information in Section 1.02. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by email or through an online reporting form provided for this purpose by the College) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. If an attempt is made to file a formal complaint but this standard is not met, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

A Complainant may report Prohibited Conduct without filing a formal complaint for the purposes of documenting the reported conduct with the College, to request supportive measures (*see* Section 7.03 Supportive Measures and Interim Responsive Measures), and/or to learn about options for resolution under this Policy.

If the Title IX Coordinator is the Respondent, a witness to an alleged incident, or otherwise accused of a violation of this Policy in a report of Prohibited Conduct, a report may be made to an Official with Authority.

No member of the College community may discourage an individual from reporting Prohibited Conduct. No employee is authorized to investigate or resolve reports of conduct prohibited by this Policy without the approval, involvement, and direction of the Title IX Coordinator.

### **Section 5.02 Reporting to Campus Police**

Campus Police staff members are Mandated Reporters. When Campus Police receives a report related to Prohibited Conduct under this Policy, an officer may conduct an investigation to determine whether there is an ongoing or imminent threat to the campus community or for law enforcement purposes.

Erskine College Campus Police is accessible 24 hours a day, seven days a week, available by phone at (864) 379-8869 and located at 5 Bonner St, Due West, SC 29639.

Any information that Campus Police receives related to a report of Sexual Harassment will be shared with the Title IX Coordinator. Information provided to the Title IX Coordinator by Campus Police will

be used at the discretion of the Title IX Coordinator and other College administrators to assist in the resolution of a complaint under this Policy.

### **Section 5.03 Reporting to Local Law Enforcement**

**Individuals may file a complaint directly with local law enforcement agencies by dialing 911.** Individuals may contact any of the following for assistance in filing a complaint with local law enforcement, you may contact Campus Police or the Title IX Coordinator.

Individuals may file complaints or discuss matters with law enforcement authorities without requesting an investigation under this Policy. Individuals who make a criminal complaint also may choose to pursue a College Complaint simultaneously or at a different time.

### **Section 5.04 Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **Section 5.05 Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA<sup>9</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to Campus Police regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

## **ARTICLE VI. GENERAL PROCEDURES ADDRESSING ALL COMPLAINTS OF PROHIBITED CONDUCT**

### **Section 6.01 Impartiality and Conflicts**

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<sup>9</sup> VAWA is the Violence Against Women Act, enacted in 1994.

Individuals involved in the investigation or resolution of complaints under this Policy may neither have nor demonstrate a conflict of interest or bias for a party generally or for a specific Complainant or Respondent. To raise a concern involving bias or a conflict of interest of an individual designated to investigate or resolve a complaint under this Policy, individuals should contact the Title IX Coordinator who will determine if the concern is reasonable and supportable. If so, another pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

The formal resolution process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence standard.<sup>10</sup>

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 or a third party to perform such person's duties under this Policy. (If the Title IX Coordinator is the Respondent or otherwise biased, then the president of the College will appoint another College employee or a third party to perform their duties under this Policy.)

### **Section 6.02 Timing**

The College will make every reasonable effort to ensure that the resolution of a complaint occurs in as timely and efficient a manner as possible. The College will strive to complete the resolution of a complaint (not including any appeal) within 90 calendar days of the receipt of the complaint, absent extenuating circumstances. If circumstances, such as complexity of the case, non-availability of parties or witnesses, College breaks, or other circumstances require the resolution to extend past 90 calendar days, the College will notify the parties of that fact.

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 for good cause; in such case, the Title IX Coordinator will provide the Complainant and the Respondent with written notice of the modified deadline and the reason for the modification.

### **Section 6.03 Documentation and Recording**

The College will retain documentation (including, but not limited to, any written complaints, notifications, the investigative report, written findings of fact, petitions for appeal, notifications of decisions and any written communication between the parties) for at least seven (7) years.

Documentation pertaining to expulsions or degree revocations will be retained indefinitely or in accordance with College policy.

The College may record any interviews, meetings, or proceedings related to this Policy. Any recordings will be the property of the College, and copies of any recordings will not be available except as required or authorized by law. Any technological problems that result in no recording or an inaudible one will

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<sup>10</sup> Preponderance of the evidence means that it is more likely than not that a violation occurred.

not affect the validity of the outcome of a case. Parties, witnesses, and Advisors are not permitted to record any of the proceedings.

#### **Section 6.04 Privacy in Resolution Processes**

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 resolution processes are not open to the general public. Accordingly, documents prepared in anticipation of the facilitated and/or the formal resolution processes (including the Complaint, the investigative report, and notices and communications to or from the Complainant or the Respondent); documents, statements, or other information introduced in the interviews and meetings; and outcome letters may not be disclosed outside of those processes except as may be required or authorized by law. The College reserves the right to notify parent(s) or guardian(s) of a student Respondent of the outcome of any investigation involving that Respondent, redacting names of any other students who do not consent to the disclosure of their information.

College policy does not prohibit the further disclosure of outcome letters by either the Complainant or the Respondent. However, the College strongly encourages parties to maintain privacy in proceedings pursuant to this Policy.

#### **Section 6.05 Consolidation of Investigation**

The Title IX Coordinator may consolidate multiple reports against a single Respondent or group of Respondents into one investigation if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident(s).

#### **Section 6.06 Termination of Processes**

At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that the Policy has been violated, the Title IX Coordinator will end the process and notify all parties.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

#### **Section 6.07 Withdrawal or Resignation with Pending Allegations/Charges**

- A. Students.** If a student has an allegation pending for violation of this Policy, the College may place a hold on a student's ability to graduate and/or to receive an official transcript or diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student.

However, the College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the College. The student may also be barred from College property and/or events.



If the student Respondent only withdraws for a specified period of time (e.g., one semester), the resolution process may, at the discretion of the Title IX Coordinator, continue remotely and that student is not permitted to return to College unless and until all sanctions, if applicable, have been satisfied.

- B. Employees.** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the College, and the records retained by the Title IX Coordinator will reflect that status.

College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **Section 6.08 Advisors**

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor, as long as the Advisor is eligible and available.<sup>11</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored throughout the resolution process.

- A. Who Can Serve as an Advisor.** The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. An assigned, trained Advisor will be trained by the College and be familiar with the College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

- B. Advisors in Hearings/College-Appointed Advisor.** Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses.

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<sup>11</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they must have an advisor for the hearing. If the party's Advisor will not conduct cross-examination, the College will appoint an Advisor to do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. The Decision-maker/Panel will also question the parties and witnesses during the hearing.

- C. **Advisor's Role.** The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

- D. **Pre-Interview Meetings.** Advisors may request to meet with Title IX Coordinator in advance of interviews or meetings to clarify and understand their role and College's policies and procedures. The Advisor's role will also be described in the parties initial meeting with the Title IX Coordinator.

- E. **Advisor Violations of College Policy.** All Advisors are subject to the same policies and procedures, whether they are attorneys or not. Advisors are expected to advise the parties without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker/Panel except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

- F. **Sharing Information with the Advisor.** The parties generally wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor if they choose. Doing so may help the parties participate more meaningfully in the resolution process.

The College also provides a consent form that authorizes the College to share such information directly with an Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before College is able to share records with an Advisor. The College will not honor requests that all communication be made through a parties Advisor.

**G. Privacy of Records Shared with Advisor.** Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

**H. Expectations of an Advisor.** The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned. The College may, but is not required to, change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

**I. Expectations of the Parties with Respect to Advisors.** The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to provide prompt notice to the Title IX Coordinator if they change Advisors. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their Advisor for the hearing two (2) business days before the hearing.

## **Section 6.09 Resolution Process Pool**

The resolution processes rely on a pool of College employees trained to carry out the procedures listed below. The pool includes individuals who may serve as Investigators, Advisors, or Decision-makers.

A list of College employees in the pool can be found on the College's Title IX webpage. In addition to College employees, the Title IX Coordinator may, in their sole discretion, appoint external individuals to serve in the role of Investigator, Advisor, Hearing Decision-maker/Panelist, or Appeal Decision-maker/Panelist.

## **ARTICLE VII. PROCESSES APPLICABLE TO ALL COMPLAINTS OF PROHIBITED CONDUCT**

### **Section 7.01 Resolution Overview**

Erskine College will act on any reports or formal complaints alleging violations of this Policy that are received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The resolution procedures apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. *A set of technical dismissal requirements within the Title IX regulations may apply as described below.* While the allegations may be technically dismissed pursuant to the Title IX regulations, any remaining allegations of violations of this Policy will be resolved according to these same resolution procedures.

- A. Mandatory Dismissal.** The College must dismiss a formal complaint or any allegations therein if, at any time during the formal resolution process it is determined that:
1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in this Policy, even if proved; and/or
  2. The conduct did not occur against a person in the United States; and/or
  3. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; and/or
  4. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the recipient.
- B. Discretionary Dismissal.** The College may dismiss a formal complaint or any allegations therein if, at any time during the formal resolution process:
1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
  2. The Respondent is no longer enrolled in or employed by the College; or
  3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

### **Section 7.02 Title IX Coordinator Receipt of Report**

When the Title IX Coordinator is informed of a report or they receive a formal complaint, they or their designee will promptly conduct an initial assessment to determine next steps.

The Title IX Coordinator's initial assessment could include, but is not limited to, the following:

- A. When a formal complaint has not been made.** The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint and will assist them to do so. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a formal complaint because a risk assessment indicates a compelling threat to health and/or safety.
- B. If a formal complaint is received.** The Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- C. If the Complainant has not decided how to proceed.** The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, a facilitated resolution, or a formal resolution.
- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs and implement supportive and remedial measures. No informal or formal resolution process is initiated, but the Complainant can elect to initiate one later, if desired.
  - If a facilitated resolution or formal resolution is preferred, a Title IX Coordinator will be assigned to review possible steps forward and oversee any resolution processes.

### **Section 7.03 Supportive Measures and Interim Responsive Measures**

Following receipt of a report and at any point during or after the resolution of a formal complaint, the Title IX Coordinator, Title IX Coordinator, or their designee will determine which, if any, of the following measures and/or actions should be taken:

**A. Supportive Measures.** When warranted to ensure the safety and well-being of the parties, the Title IX Coordinator, in consultation with appropriate administrators, may implement one or more supportive measures, if appropriate and/or reasonably available, including, but not limited to, the following:

- Issuing no-contact orders to prevent any contact between or among the Complainant, the Respondent, witnesses, and/or third parties.
- Providing an individual to escort a Complainant and/or Respondent between on campus classes, work, and/or activities
- Altering campus housing assignments
- Safety planning
- Arranging to dissolve a campus housing contract and offering a pro-rated refund.
- Altering work arrangements or schedules.
- Class schedule modifications, incompletes, or withdrawals
- Rescheduling class work, assignments, and examinations.
- Referral to the Employee Assistance Program
- Academic support services.
- Referral for counseling and/or medical services
- Visa and immigration assistance
- Referral to community-based service providers
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Issuing Trespass Notices
- Timely Warnings
- Any other actions deemed appropriate by the Title IX Coordinator

A Complainant need not file a formal complaint in order for supportive measures to be implemented for the Complainant and/or Respondent. The College will maintain the privacy of supportive measures, provided the privacy does not impair the College's ability to provide supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

**B. Interim Responsive Measures.** The College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and other appropriate administrators or in consultation with the Behavioral Intervention Team.

In all cases in which an emergency removal is imposed, the student, employee, or two representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator or their designee prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within three business days of the notice, objections to the emergency removal will be

deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

- C. Compliance with supportive and responsive measures.** Individuals subject to supportive or responsive measures are expected to adhere to the measures put in place by College officials until such measures are revoked or revised. Any allegations that individuals are not complying with the measures put in place will be reviewed by the Title IX Coordinator. The Title IX Coordinator may interview the Complainant, Respondent, or any other individuals with information about the alleged noncompliance, or the Title IX Coordinator may request that the appointed Investigator(s) or other trained individuals conduct interviews to determine what, if any, additional steps need to be taken. Additional steps may include, but are not limited to, additional measures, adjudication under this Policy, or a referral to the director of human resources, the provost, or the vice president of campus life and student development for adjudication under other campus policies.

#### **Section 7.04 Initial Meetings with the Title IX Coordinator**

As soon as is practicable, the Title IX Coordinator will contact each party to schedule an initial meeting to discuss the complaint, resources, rights and responsibility, and avenues for resolution of the complaint.

#### **Section 7.05 The Title IX Coordinator's Initial Determination**

The Title IX Coordinator will review the information available to determine whether the complaint will move forward for resolution under this Policy. To make their determination, the Title IX Coordinator may perform an initial inquiry, if the Title IX Coordinator did not already do so, which may include, but is not limited to, preliminary conversations with witnesses and information gathering.

The complaint will move forward to either formal resolution or facilitated resolution pursuant to this Policy unless it is clear on its face and/or based on the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue is a violation of this Policy.

- A. If a facilitated resolution has been requested, the Title IX Coordinator will assess whether the complaint is suitable for facilitated resolution and may seek to determine if the Respondent is also willing to engage in a facilitated resolution.
- B. If a formal resolution is requested, the Title IX Coordinator will determine if the misconduct alleged falls within the scope of Title IX.
  - If it does, the Title IX Coordinator will initiate the formal resolution process, directing the investigation to address: an incident, and/or a pattern of alleged misconduct, and/or a culture/climate issue, based on the nature of the complaint.
  - If it does not, the Title IX Coordinator will determine that Title IX does not apply (and will “dismiss” that aspect of the complaint), assess which policies may apply, and initiate the formal resolution process, if still applicable. Please note that dismissing a complaint under Title IX is just procedural and does not limit the College’s authority to address a complaint with an appropriate process and remedies (*see* Section 7.01).

If the Title IX Coordinator determines that resolution of the complaint is not warranted, they will close the complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure. This dismissal may be appealed by any party within three (3) business days of the closure.

Following receipt of the appeal, the Title IX Coordinator or their designee will determine whether the complaint warrants further investigation and whether any additional or different remedial action is necessary. The Title IX Coordinator will notify the Complainant and the Respondent concurrently of their decision within five (5) business days of receipt of the appeal. The decision of the Title IX Coordinator is final.

### **Section 7.06 Respondent’s Acknowledgement of Responsibility**

At any time prior to receiving the Outcome Letter during the formal resolution process or the conclusion of the facilitated resolution process, the Respondent may elect to acknowledge their actions and take responsibility for the reported Prohibited Conduct. In such a situation, the complaint will proceed pursuant to Section 8.04(B) for the determination of sanctions. Sanction determinations are not subject to appeal, and no further options for appeal apply.

## **ARTICLE VIII. FORMAL RESOLUTION**

### **Section 8.01 Investigation**

- A. **Notice of Allegations and Investigation.** When a formal complaint moves forward to the formal resolution process, the Respondent will be notified in writing (and the Complainant will be copied) of the following: the name of both parties, if known; a meaningful summary of all of the allegations; the precise misconduct being alleged; the date and location of the alleged incident(s), if known; the specific policies implicated; a description of the applicable procedures; a statement of the potential sanctions/responsive actions that could result; a statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination; a statement that determinations of responsibility are made at the conclusion of the process and that parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period; a statement about the College’s policy on retaliation; information about the privacy of the process; information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor; a statement informing the parties that the College’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process; detail on how the party may

request disability accommodations during the interview process; a link to or attachment with information required by VAWA, if applicable; the name(s) of the Investigator(s), if they have been identified, and a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and an instruction to preserve any evidence directly related to the allegations.

Amendments and updates to the Notice of Allegations and Investigation may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice may be delivered in person, via mail, or via email to the parties' College-issued email address. Once sent, notice will be presumptively delivered.

- B. Appointment of Investigators.** The Title IX Coordinator promptly will appoint one or more Investigator(s). Within three (3) business days of receiving the names of the Investigator(s), the parties may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such Investigator(s) to the matter. The Title IX Coordinator carefully will consider such statements and will assign different individual(s) as Investigator(s) if it is determined that a material conflict of interest exists.
- C. Overview of the investigation.** All investigations are thorough, reliable, impartial, prompt, and fair. Throughout the investigation, parties will have an equal opportunity to submit evidence, to identify witnesses and provide an explanation of their relevancy to the investigation, and to submit questions they believe should be directed by the Investigator(s) to any witness or to each other.

The Investigator(s) promptly will begin the investigation by identifying issues, developing a strategic investigation plan with an intended timeline, and creating a witness list (to be provided to both parties, if desired) and evidence list. Steps the Investigators will take may include the following:

- Conducting interviews with the Complainant, the Respondent, and witnesses.
- Visiting, inspecting, and taking or reviewing photographs at relevant sites where applicable.
- 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 Investigators will remain neutral.
- Providing parties and witnesses an opportunity to review and verify the accuracy of interview summaries.
- Writing a comprehensive investigation report, which will include summaries of the investigation, party and witness interviews, and relevant evidence. The investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations.

- D. Evidentiary matters.** Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding of responsibility does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern, (2) the sexual history of the parties, though there may be a limited exception made in regard to the sexual history between the parties or when evidence regarding the Complainant's sexual history is offered to prove that someone other than the responding party engaged in the reported misconduct or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent, or (3) the character of the parties.



**E. Draft investigative report.** At the conclusion of the investigation, the Investigator(s) will submit the investigative report to the Title IX Coordinator. The Title IX Coordinator will make the draft investigative report concurrently available to both parties and will provide ten (10) business days for the parties to review and respond to the draft investigative report (“review and response period”). In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator(s) during the designated review and response period will not be considered in the determination of responsibility for a violation of this Policy and will not be considered for appeal.

During the review and response period, the Complainant and Respondent may meet with the Investigator(s), submit additional comments and information to the Investigator(s), identify any additional witnesses or evidence for the Investigator(s) to pursue, and submit any further questions that they believe should be directed by the Investigator(s) to the other party or to any witness.

The Investigator(s) will review any responses submitted during the review and response period and determine any additional steps that should be taken before finalizing the report. The Investigators may respond in writing in the investigation report to the parties’ submitted responses and/or share the responses between the parties for additional responses. The final investigative report will be submitted to the Title IX Coordinator.

Due to the sensitive nature of the information in this report, neither the parties nor their Advisors may copy, remove, photograph, print, image, record or in any other manner duplicate or remove the information provided. The Complainant and Respondent may not make copies of the draft investigative report. All parties to whom the draft investigative report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the complaint); the draft investigative report may only be disclosed as is contemplated by this Policy.

### **Section 8.02 Hearing Referral.**

**A. Evaluation of the final investigative report.** The Title IX Coordinator will evaluate the final investigative report and will direct that the complaint proceed to a hearing for a finding of “responsible” or “not responsible” unless it is clear from the final investigative report that no reasonable grounds exist for believing that the conduct at issue constitutes a violation of this Policy.

The Title IX Coordinator will specify in writing to the parties which allegations will move forward to a hearing under this Policy. Any allegations that move forward to a hearing will be referred to as “charges.”

The Notice of Charges will include the following information:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker/Panel member on the basis of demonstrated bias. This must be raised with the Title IX Coordinator within three (3) business days of receiving the notice.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker/Panel. For compelling reasons, the Chair or Title IX Coordinator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have an advisor present to ask any questions of the other party or witnesses. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker/Panel about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker/Panel will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- A reminder that parties and Advisors cannot bring mobile phones or recording devices into the hearing.

If the Title IX Coordinator finds that it is clear from the final investigative report that no reasonable grounds exist to believe that the conduct at issue is a violation of this Policy, they will close the complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

The Complainant may appeal the Title IX Coordinator's decision to close the complaint in writing to the Title IX Coordinator or their designee and provide a copy of the appeal to the Title IX Coordinator within three (3) business days of receipt of the notice of closure. The Title IX Coordinator will promptly inform the other party of the appeal.

Following receipt of the appeal, the Title IX Coordinator or their designee will determine whether the complaint warrants further investigation or resolution and whether any additional or different action is necessary. The Title IX Coordinator will notify the Complainant and the Respondent concurrently of their decision within five (5) business days of receipt of the appeal. The decision of the Title IX Coordinator is final.

If a hearing occurs near or after the end of an academic term, the College may place a hold on a student Respondent's account until the matter, including appeal, is fully resolved.

**B. Hearing Decision-maker/Panel.** The College will designate a single Decision-maker or a three-member Panel from the pool or by utilizing an external individual(s). When a single Decision-maker is appointed, that individual will serve in the capacity as the "Chair." When a three-member Hearing Panel is appointed, one Hearing Panel member will be appointed Chair. Decision-makers/Panel members will not have had any prior involvement with the investigation. The Title IX Coordinator may include an alternate to sit through the resolution process in the event that a substitute is needed for any reason. An additional individual may serve as an administrative facilitator of the hearing, if their previous role in the process does not create a conflict of interest. The hearing will convene at a time designated by the Title IX Coordinator in consultation with the Chair.

Within three (3) business days of receiving the names of the Decision-maker/Panel members, the parties may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such individual(s) to the matter. The Title IX Coordinator carefully will consider such

statements and will assign different individual(s) as the Decision-maker/Panel members if it is determined that their bias or conflict of interest precludes an impartial hearing. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the Decision-maker/Panel. Parties will be notified in writing of any changes prior to the hearing.

Decision-maker/Panel members who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors prior to the hearing.

- C. Final investigative report.** The Title IX Coordinator will send the final investigative report to both parties a minimum of ten (10) business days prior to the scheduled hearing. If all parties and the Decision-maker/Panel agree, the timeline may be expedited.

Parties and their Advisors may continue to review and comment on the final investigative report, including available evidence, during the ten (10) business days leading up to the hearing. Additional review and comment should be submitted to the Title IX Coordinator who will ensure that it is shared with the Chair and the other party.

Due to the sensitive nature of the information in this report, neither the parties nor their Advisors may copy, remove, photograph, print, image, record or in any other manner duplicate or remove the information provided. The Complainant and Respondent may not make copies of the final investigative report. All parties to whom the final investigative report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the complaint); the final investigative report may only be disclosed as is contemplated by this Policy.

- D. Pre-Hearing Meetings.** The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing so that the Chair can rule on their relevance ahead of the hearing to avoid any improper evidentiary introduction in the hearing, to provide recommendations for more appropriate phrasing, and to minimize any potential delays during the hearing. However, advance review does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting; documentation and rationale may be sent by the Chair to the parties and their Advisor(s) after the meeting if they wish to meet with the other party or consult with the other Hearing Panel members prior to making a decision.

The Chair, **only with full agreement of the parties**, may decide in advance that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigative report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those ruling between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel, the Title IX Coordinator, or ask them to attend pre-hearing meetings.

Pre-hearing meetings will not be recorded.

### **Section 8.03 Hearing**

- A. Hearing Procedures.** All individuals participating in the hearing are expected, unless an exception was provided by the Chair or the Title IX Coordinator beforehand, to be physically present for the hearing. The College will use technology to facilitate the participation of parties and witnesses, who will be located in separate rooms, while providing the speaking party the opportunity to be in the same room as the Decision-maker/Panel.

Participants at the hearing will include the Chair, any additional Hearing Panelists, a hearing facilitator (if appointed), the Investigator(s) who conducted the investigation, the parties (or two (2) organizational representatives when an organization is the Respondent, Advisors to the parties, any called witnesses, the Title IX Coordinator (if requested by the Chair), and anyone providing authorized accommodations or assistive services.

At the hearing, the Decision-maker/Panel has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though the related alleged conduct may not specifically fall within this Policy.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker/Panelists and the parties and will then be excused.

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker/Panel, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

- B. Commencement of the Hearing.** The Chair will explain the procedures and introduce the participants. The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.
- C. Presentation of the final investigative report.** The Investigator(s) will present a summary of the final investigative report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker/Panelists and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker/Panel should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the

Chair will direct that it be disregarded.

- D. Testimony and Questioning.** After the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker/Panelists and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel or other Hearing Panelists on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker/Panel member at the hearing, the Chair will consult with legal counsel and/or refer them to the Title IX Coordinator and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

- E. Refusal to Submit to Cross-Examination.** If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker/Panel may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker/Panel must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker/Panel, as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker/Panel may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than Sexual Harassment are considered at the same hearing, the Decision-maker/Panel may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and

may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

#### **Section 8.04 Outcome**

- A. Determinations.** The Decision-maker/Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a Hearing Panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair but, if so, is there only to facilitate procedurally, not to address the substance of the allegations.
- B. Sanctioning Process.** When there is a finding of responsibility on one or more of the allegations, the Decision-maker/Panelists may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker/Panel may, at their discretion, consider the statements, but they are not binding. Additionally, the Decision-maker/Panel will review any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, if required. For example, the Director of Human Resources should be consulted before finalizing a determination with regard to faculty or staff.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and the finalized sanctions.

The Chair's report typically should not exceed five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

- C. Notice of Outcome.** Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within five (5) business days of receiving the Decision-maker/Panel's deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and

hearings held. Notwithstanding the above, this information will be included in the Notice of Outcome only to the extent the College is permitted to share such information under state or federal law, and information that may not be disclosed may be redacted.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation; any sanctions issued; and any remedies provided to the Complainant designed to ensure access to the College's educational or employment program or activity (this final detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

**D. Sanctions.** Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker/Panel

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

**Student Sanctions.** The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

The appropriate sanctions for penetrative sexual assault will include, at a minimum, a period of suspension from the College.

**Employee Sanctions.** Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Termination is the presumptive sanction for a finding of responsible for any charge of Sexual Harassment.

## **Section 8.05 Appeals**

**A. Request for Appeal.** Any party may file a Request for Appeal, but it must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A three-member Appeal Panel OR a single Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator. When a single Appeal Decision-maker has been assigned, they will act as the "Chair." Otherwise, one member of the Appeal Panel will be designated the Chair. No Appeal Panelists will have been involved in the process previously.



The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**B. Grounds for Appeal.** Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Title IX Coordinator, Investigator(s), or Decision-maker/Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

**C. Review of Request for Appeal.** If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator and Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker/Panel.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker/Panel will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker/Panel, as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties. Neither party may submit any new requests for appeal after this time period.

**D. Appeal Determination.** The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Decision-maker/Panel will render a decision in no more than five (5) business days, barring exigent circumstances. If an Appeal Panel is used, decisions are made by a majority vote, and all decisions apply the preponderance of the evidence standard.

The following considerations will be made when the Appeal Decision-maker/Panel reviews the appeal:

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for the Appeal Decision-maker/Panel to substitute their judgment for that of the original Hearing Decision-maker/Panel merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Decision-maker/Panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision is changed on remand.
- In rare cases where a procedural error cannot be cured by the original Hearing Decision-maker/Panel (as in cases of bias), the appeal may order a new hearing with a new Hearing Decision-maker/Panel.
- The results of a remand to a Hearing Decision-maker/Panel cannot be appealed.
- In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

**E. Sanctions Status During the Appeal.** Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures, as outlined in Section 7.03(B), will commence.

The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **Section 8.06 Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of an escort between on campus classes, work, and/or activities
- Climate surveys
- Policy modification and/or training
- Implementation of long-term no-contact orders between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College's ability to provide these services.

### **Section 8.07 Failure to Comply with Sanctions, Remedies, and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker/Panel (including the Appeal Decision-maker/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **ARTICLE IX. FACILITATED RESOLUTION**

### **Section 9.01 Facilitated Resolution, Generally.**

Facilitated resolution is only appropriate if (i) the Complainant and Respondent voluntarily agree to such resolution after receiving full disclosure of the allegations and their options for formal resolution and (ii) the Title IX Coordinator determines that facilitated resolution is an appropriate mechanism for resolving the complaint. To make their determination about the appropriateness of facilitated resolution or to assist in the in the process of the facilitated resolution, the Title IX Coordinator may conduct interviews of the parties and/or witnesses or may assign Investigator(s) to do so. If the Title IX Coordinator determines any investigation is warranted, the appointment of Investigator(s) may be appealed in accordance with Section 8.01(B).

Facilitated resolution may not be selected for less than all of the misconduct alleged in the complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but use the facilitated resolution process for all other claims). If the parties agree to facilitated

resolution (and facilitated resolution is determined to be appropriate), then all of the claims must be resolved according to the facilitated resolution process.

Both parties have the right to terminate the facilitated resolution process at any time and request to proceed with formal resolution. Furthermore, the Title IX Coordinator may, where appropriate, terminate or decline to initiate facilitated resolution and proceed with the formal resolution process instead. In such cases, statements or disclosures made by the parties in the course of the facilitated resolution process, or in any interviews or investigation related to facilitated resolution, may be considered in the subsequent formal resolution proceedings.

- A. **The facilitator.** When the Complainant's complaint is to be resolved according to the facilitated resolution process, the Title IX Coordinator will oversee the process. The Title IX Coordinator will involve other individuals as deemed beneficial to the process (for example, a human resources representative for matters involving employees).
- B. **Notice of facilitated resolution.** The Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent setting forth the names of any individuals who will assist in the facilitated resolution, the alleged Prohibited Conduct that will be subject to the facilitated resolution process, and information regarding initial steps for facilitated resolution.
- C. **Advisors.** As provided in Section 6.10, both the Complainant and Respondent may have an Advisor present to support and assist them during the facilitated resolution process.
- D. **No Contact Prior to Facilitated Resolution.** The Complainant and the Respondent may not contact each other outside of the facilitated resolution process, even to discuss the process.
- E. **Participation.** Both the Complainant and the Respondent are expected to participate in the facilitated resolution. If either party fails to fully participate in the facilitated resolution, and such party was provided proper notice of the terms of facilitated resolution, including notice of any meetings, then absent extenuating circumstances, the Title IX Coordinator may direct that resolution of the complaint be determined according to the formal resolution process set forth in Article VIII or may reschedule or reevaluate the facilitated resolution.

## **Section 9.02 The Facilitated Resolution Process**

Facilitated resolution may include the following:

- **Resolution with the Assistance of a Third Party.** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from the Title IX Coordinator who may directly facilitate or may arrange to have a trained representative facilitate a meeting or meetings between the parties or individually with the parties. The availability of this form of facilitated resolution, and any resolution reached through such form of facilitated resolution, is subject to the agreement of the Title IX Coordinator in consultation with the Title IX Coordinator, the Complainant, and the Respondent.
- **Interventions and Remedies.** Facilitated resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or College employment activities; increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct is alleged to have occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or College housing modifications for student Complainants; workplace modifications for employee Complainants; one or more of the restorative remedies or other sanctions

described in this Policy; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of this Policy.

Any form of facilitated resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the College and the parties is reached through facilitated resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if either party fails to comply with the terms of the facilitated resolution, the matter may be referred for an investigation and formal resolution under these procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for facilitated resolution, which typically will be completed within thirty (30) calendar days.

NOTE: A resolution that is reached pursuant to this section will not be included in a student Respondent's student conduct record or in an employee Respondent's personnel record, unless the inclusion of such information is agreed to as part of the facilitated resolution of the matter.

## **EXHIBIT A: Glossary of Terms**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (or Formal Complaint)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter required to report Sexual Harassment (irrespective of Clery Act Campus Security Authority status).
- *Formal Resolution Process* means a method of formal resolution designated by the College to address conduct that falls within the policies included within this Policy, and which complies with the requirements of 34 CFR Part 106.45.
- *Resolution Process Pool* includes any Investigators, Hearing Decision-makers, Appeal Panel members, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making authority within the College's Formal Resolution process.
- *Investigator* means the person or persons charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Erskine College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Preponderance of the Evidence is the standard of proof used to make determinations under this Policy. A preponderance of the evidence means that it is more likely than not that a violation occurred.*
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of a Facilitated or Formal Resolution Process.

- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 3.03 for greater detail.
- *Title IX Coordinator* is the official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator and members of the Resolution Process Pool.

## **EXHIBIT B: Suggested Actions for Victims of Sexual Assault**

While all types of discrimination, harassment, and retaliation are inappropriate and taken seriously by the College, actions involving Sexual Assault (as defined in Article III) are particularly concerning. Thus, if you are the victim of Sexual Assault, the College's first priority is to help you take steps to address your safety, medical needs and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue a criminal or College complaint.

- 1. Ensure your physical safety.** You may seek help from local law enforcement agencies or by contacting Campus Police. Campus Police can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Security personnel are on duty at Campus Police 24 hours a day, seven days a week.
- 2. Seek medical assistance and treatment.** Local options for medical care include Spartanburg Medical Center and Spartanburg Regional – Mary Black Campus. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the extent of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities also can screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs).

Employees at the Wellness Center can help you obtain transportation to a local hospital and can help you contact a support person, such as a family member, a friend, or a roommate.

If you choose to have an evidence collection kit (or “rape kit”) completed, it is important to do so within 72 hours. Even if you have not decided whether to file charges, it is advisable to have the evidence collection kit completed so that you can better preserve the options of obtaining a protective order and/or filing criminal charges at a later date. Spartanburg Medical Center and Spartanburg Regional – Mary Black Campus administer evidence collection kits, and you can request an anonymous kit with no law enforcement involvement. Spartanburg Medical Center has specially trained sexual assault nurse examiners (SANEs) who administer these kits. The cost of these kits will be paid for from a crime victim fund, and you will not be billed for the kits.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is completed. You also should wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

- 3. Obtain emotional support.** The Wellness Center can help students process their emotions and begin the recovery process. The counselors at the Wellness Center are trained to provide crisis intervention on short-term and emergency issues. The Wellness Center also can provide referral services for outside providers and law enforcement. Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are confidential and are not part of students' College records and will not be reported to other College personnel.

Employees may contact the Employee Assistance Program to obtain emotional support (available at: 800-854- 1446).

**Obtain information/report misconduct.** You are encouraged to report incidents of Sexual Assault to the College's Title IX Coordinator (even if you have filed a report directly with law enforcement).



Further information about how to report Sexual Assault is provided in the body of this Policy. The Title IX Coordinator can help you access resources and can provide support and information, including information on the College's procedures for investigating and addressing instances of Sexual Assault.

## EXHIBIT C: Campus and Community Resources

The following list of campus and community resources was compiled for the use of the entire campus community. Any individuals seeking assistance from campus resources should note that College employees, with the exception of those identified as “Confidential Resources,” are considered “Mandated Reporters.”

Individuals who cannot find an appropriate resource below are encouraged to contact the Title IX coordinator (864-379-8859) for assistance in identifying other options.

### 1. Mandatory Reporter Campus Resources

Title IX Coordinator	Buck Brown Belk Hall 238 2 Washington Street Erskine College, Due West, SC 864-379-8805 <a href="mailto:brown@erskine.edu">brown@erskine.edu</a>
Human Resources	Director of Human Resources Barbara Peck Belk Hall: 239 Erskine College, Due West, SC (864) 379-6546 <a href="mailto:peck@erskine.edu">peck@erskine.edu</a>
Student Services	Vice President for Student Success Wendi Santee Watkins Student Center Erskine College, Due West, SC (864) 379-8701 <a href="mailto:santee@erskine.edu">santee@erskine.edu</a>
Erskine College Police Department	Matthew Busby, Chief 5 Bonner Street Due West, SC 864-379-8869 (Office) <a href="mailto:mbusby@erskine.edu">mbusby@erskine.edu</a>
Athletics	Deputy Athletic Director Rebecca Magee Galloway 208 2 Washington Street Erskine College, Due West, SC 864-379-8859 <a href="mailto:magee@erskine.edu">magee@erskine.edu</a>

### 2. Confidential Resources on Campus

Counseling	Ms. Cameron R. Hipp Licensed Professional Counselor Due West Family Medicine 6 College Street Due West, SC 29639 864-379-2345
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Health Center	Ms. Joanne Wrenn, RN Due West Family Medicine 6 College Street Due West, SC 29639 864-379-2345
College Chaplain	Interim Chaplain Joshua Chiles Galloway Main Office 2 Washington Street Erskine College, Due West, SC 864-379-8792 <a href="mailto:chiles@erskine.edu">chiles@erskine.edu</a>
Victim Advocate	Jennifer Cooley Victim Advocate, Erskine College Police Department Telephone: 864-379-6514 (O); 864-377-4531 (C) <a href="mailto:jcooley@erskine.edu">jcooley@erskine.edu</a>

### 3. **Confidential Resources in the Community**

#### **Due West Police Department**

1 Bonner Street  
Due West, SC 29639-955  
Telephone: 864-379-2150

#### **Beyond Abuse**

Sexual Violence and Abuse Organization  
[www.beyondabuse.info](http://www.beyondabuse.info)  
116 East Alexander Avenue  
Greenwood, SC 29646  
Telephone: 864-227-1623

#### ***Medical Providers:***

**Emergency Medical Services** can be reached at 911.

#### **Foothills Alliance**

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

#### **Abbeville Area Medical Center**

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

**Self Regional Healthcare**

[www.selfregional.org/](http://www.selfregional.org/)

1325 Spring Street

Greenwood, SC 29646

Telephone: 864-725-4111

**4. National Resources**

**Know Your IX**

<http://knowyourix.org/basics>

**National Coalition Against Domestic Violence (NCADV)**

<http://www.ncadv.org>

**National Sexual Assault Hotline**

<https://www.rainn.org/get-help/national-sexual-assault-hotline>

1-800-656-HOPE

**National Coalition of Anti-Violence Programs**

<http://ncavp.org/default.aspx>

**National Dating Abuse Helpline**

<http://www.loveisrespect.org/>

866.331.9474

**Stalking Resource Center**

<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

**One Love Danger Assessment App**

<http://www.joinonelove.org/>

**Victim Rights Law Center**

<http://www.victimrights.org/>

**National Suicide Prevention Lifeline**

[www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org)

## **Exhibit D: Statement of the Rights of Parties**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to College officials.
  - The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
  - The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
  - The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
  - The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
  - The right to be treated with respect by College officials.
  - The right to have College policies and procedures followed without material deviation.
  - The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
  - The right not to be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
  - The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by College authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
  - The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Campus Police and/or other College officials.
  - The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
  - The right to a College-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
  - The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
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- Providing an individual to escort a Complainant and/or Respondent between on campus classes, work, and/or activities
  - Altering campus housing assignments
  - Safety planning
  - Arranging to dissolve a campus housing contract and offering a pro-rated refund.
  - Altering work arrangements or schedules.
  - Class schedule modifications, incompletes, or withdrawals
  - Rescheduling class work, assignments, and examinations.
  - Academic support services.
  - Referral for counseling and/or medical services
  - Visa and immigration assistance
  - Student financial aid counseling
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the College's ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  - The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
  - The right not to have irrelevant prior sexual history or character admitted as evidence.
  - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  - The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
  - The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
  - The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  - The right to regular updates on the status of the investigation and/or resolution.
  - The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
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- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
  - The right to preservation of privacy, to the extent possible and permitted by law.
  - The right to meetings, interviews, and/or hearings that are closed to the public.
  - The right to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
  - The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
  - The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
  - The right to be present via remote technology during all testimony given and evidence presented during any formal grievance hearing.
  - The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
  - The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
  - The right to be informed in writing of when a decision by the College is considered final and any changes to the sanction(s) that occur before the decision is finalized.
  - The right to be informed of the opportunity to appeal during the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.
  - The right to a fundamentally fair resolution as defined in these procedures.
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## **EXHIBIT E: Training and Education**

### **OUTREACH & PREVENTION**

Erskine College is committed to the prevention of discrimination, harassment, and retaliation and routinely conducts outreach and educational programming designed to increase awareness of the prevalence of Sexual Harassment involving college-age students and other College constituents, as well as other forms of discrimination and harassment; inform the Erskine community about issues related to harassment and discrimination, such as substance abuse and the role of the bystander and promote knowledge of the College's policies and procedures.

### **TRAINING**

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

- Title IX Coordinator
- Resolution Process Pool
- Employees.
- Students.
- Campus Police Officers.

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

- The Policy on Equal Opportunity, Harassment, and Nondiscrimination.
  - Title IX and related regulatory guidance.
  - Discrimination laws related to employment and education
  - The College's responsibility to address allegations of discrimination, harassment, and retaliation.
  - Recognizing and responding to reports of discrimination, harassment, and retaliation.
  - Understanding the effect of discrimination and harassment on victims.
  - Understanding the link between substance abuse and Sexual Harassment.
  - Which employees are Mandated Reporters and which individuals and offices are Confidential Resources.
  - Reasonable, appropriate, and sensitive investigative and interview techniques.
  - Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking.
  - Conducting reliable, impartial, and fair investigations and determinations.
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## **EXHIBIT F: Unethical Relationships Policy**

### **EXPECTATIONS REGARDING UNETHICAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

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## EXHIBIT G: Definitions of VAWA Crimes under South Carolina Law

South Carolina definitions applied in criminal prosecutions for sex offenses may differ from the definitions used by the College to address policy violations. Erskine College is committed to the prevention of these crimes. While state law does not specifically define “consent” or “dating violence,” the following criminal definitions are applicable to criminal prosecutions for sex offenses in South Carolina:

### Criminal Sexual Conduct

- [S.C. Code Ann. § 16-3-652](#): A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses aggravated force to accomplish sexual battery; (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act; or (c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.
- “Aggravated force” means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon. [S.C. Code Ann. § 16-3-651\(c\)](#).
- “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. [S.C. Code Ann. § 16-3-651 \(h\)](#).
- [S.C. Code Ann. § 16-3-653\(1\)](#): A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.
- “Aggravated coercion” means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person. [S.C. Code Ann. § 16-3-651\(b\)](#).
- [S.C. Code Ann. § 16-3-654](#): A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; or (b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.
- “Mentally defective” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. [S.C. Code Ann. § 16-3-651\(e\)](#).
- “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause. [S.C. Code Ann. § 16-3-651\(f\)](#).
- “Physically helpless” means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. [S.C. Code Ann. § 16-3-651\(g\)](#).

### Criminal Sexual Conduct with a Minor

- [S.C. Code Ann §16-3-655 \(A\)](#): A person is guilty of criminal sexual conduct with a minor in the first degree if the actor engages in sexual battery with a victim who is less than eleven years of age;
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or the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

- [S.C. Code Ann §16-3-655 \(B\)](#): A person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.
- [S.C. Code Ann §16-3-655 \(C\)](#): A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age.

### **Stalking**

- [S.C. Code Ann. § 16-3-1700 \(C\)](#): A person is guilty of stalking if they engage in a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear:
  - (1) death of the person or a member of his family;
  - (2) assault upon the person or a member of his family;
  - (3) bodily injury to the person or a member of his family;
  - (4) criminal sexual contact on the person or a member of his family;
  - (5) kidnapping of the person or a member of his family; or
  - (6) damage to the property of the person or a member of his family.
- "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. [S.C. Code Ann. § 16-3-1700 \(D\)](#).
- "Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person. [S.C. Code Ann. § 16-3-1700 \(E\)](#).
- "Electronic contact" means any transfer of signs, signals, writings, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system. [S.C. Code Ann. § 16-3-1700 \(F\)](#).

### **Domestic Violence**

#### [S.C. Code Ann. § 16-25-20](#)

(A) It is unlawful to:

- (1) cause physical harm or injury to a person's own household member; or offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

- (1) great bodily injury to the person's own household member results or the act is
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- accomplished by means likely to result in great bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;
  - (3) has two or more prior convictions of domestic violence within ten years of the current offense;
  - (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or
  - (5) in the process of committing domestic violence in the second degree one of the following also results:
    - (a) the offense is committed in the presence of, or while being perceived by a minor;
    - (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
    - (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
    - (d) the offense is committed by impeding the victim's breathing or air flow; or
    - (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
  - (6) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
  - (7) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years. Domestic violence in the first degree is a lesser included offense of domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

(C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:

- (1) moderate bodily injury to the person's own household member results or the act is accomplished by means likely to result in moderate bodily injury to the person's own household member;
- (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;
- (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or
- (4) in the process of committing domestic violence in the third degree one of the following also results:
  - (a) the offense is committed in the presence of, or while being perceived by, a minor;
  - (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;
  - (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;
  - (d) the offense is committed by impeding the victim's breathing or air flow; or
  - (e) the offense is committed using physical force or the threatened use of force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
    - (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or
    - (ii) a request for an ambulance or emergency medical assistance to any law

enforcement agency or emergency medical provider.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

Domestic violence in the second degree is a lesser-included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.

Assault and battery in the second degree pursuant to Section 16-3-600(D) is a lesser-included offense of domestic violence in the second degree as defined in this subsection.

(D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A).

- (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, an offense pursuant to the provisions of this subsection may be tried in summary court.
  - (2) Domestic violence in the third degree is a lesser-included offense of domestic violence in the second degree, as defined in subsection (C), domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16-25-65.
  - (3) Assault and battery in the third degree pursuant to Section 16-3-600(E) is a lesser-included offense of domestic violence in the third degree as defined in this subsection.
  - (4) A person who violates this subsection is eligible for pretrial intervention pursuant to Chapter 22, Title 17.
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