

Hawkeye Community College

Sexual Harassment Policy

Purpose/Statement of Policy:

Hawkeye Community College strives to provide a safe and secure educational and workplace environment. Sexual harassment in the College's educational programs and activities is prohibited, which includes sexual assault and abuse¹, dating violence, domestic violence, and stalking, collectively called "Sexual Harassment" for purposes of this Policy. Prohibited conduct under this Policy also includes attempting or aiding in the commission of sexual harassment or retaliating against another for exercising his/her rights under this Policy.

The College is committed to educating students, staff and faculty about its policies and procedures against sexual discrimination and sexual harassment. Any such instances of discrimination and/or sexual harassment will be dealt with promptly by the College. It is intended to ensure that the College's policies and procedures related to sexual harassment are interpreted and applied consistently with Title VI, IX, the Violence Against Women Act (VAWA), the Clery Act, Iowa Code § 260C.14(18) and other applicable law.

Scope of Policy:

This Policy governs the conduct of all students, employees, and third parties whose actions impact the College's educational and working environment, regardless of sexual orientation or gender identity. This Policy applies to all locations of the College, College-sponsored activities, and incidents occurring off-campus which affect the College environment or mission.

The scope of Title IX: The College's jurisdiction under Title IX is limited to locations, events, or circumstances over which it substantially controls both the respondent accused of behavior violating this Policy and the context in which the alleged harassment occurs, as well as any building owned or controlled by a student organization that is officially recognized by the College, such as a fraternity or sorority. The College's jurisdiction under Title IX is also limited to conduct against a person that occurs in the United States, and to complainants who are engaging or attempting to engage in a College educational program or activity.

If a report or complaint falls under the College's jurisdiction under Title IX, the College will utilize the formal complaint resolution process below to respond to a claim of sexual harassment and will not proceed under any other College policy or procedure if doing so would interfere with any right or privilege provided to a party under Title IX. If the College determines that a report or complaint does not fall under the College's jurisdiction under Title IX, the College may still take action for such alleged

¹ "Sexual abuse" as contemplated by Iowa Code § 260C.14(18) is prohibited, and College students and employees should refer to this Policy for information on counseling, campus security, education, and the prompt reporting of acts constituting sexual abuse to law enforcement.

conduct, as herein provided and/or consistent with applicable law and policy (such as the Discrimination/Harassment Complaint Procedures or Student Code of Conduct) and based on the nature of the alleged conduct. The parties will be notified of this decision.

Definitions

A. Definitions of Prohibited Conduct:

Sexual harassment means:

- i. Unwelcome conduct (verbal, written, physical) that is directed at someone because of that person's sex or gender², and that meets either of the following:
 - A College employee, agent, or other individual under the College's control or authority explicitly or implicitly conditions a decision or benefit on submission to sexual conduct (e.g., sexual favors for a better grade or promotion; implicitly or explicitly threatening negative consequences if the student or employee rejects sexual advances); or
 - Unwelcome conduct that creates a hostile, intimidating or demeaning environment that is sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to participation in the College's educational program or activity. Harassing conduct includes various types of unwelcome verbal, written or physical conduct, such as unwelcome touching; sexually explicit offensive jokes; sexually degrading graphic, verbal or written comments or questions of a sexual nature; sexual innuendo; sexual threats; obscene gestures; inappropriate humor and jokes about gender specific traits or sexual orientation; sexual propositions; sexually suggestive or insulting sounds and actions, including, whistling, leering, and obscene gestures; and may include sexual assault or exploitation.
- ii. *Sexual assault or abuse*³, defined as one of the following offenses in which one has or attempts to have sexual contact or sexual penetration with another individual without their consent:

² This includes both actual and perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

³ The State of Iowa uses the term "Sexual Abuse":

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.

- i. Rape: the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person without consent of the victim;
 - ii. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim;
 - iii. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
Statutory rape: sexual intercourse with a person who is under the statutory age of consent.
- iii. *Dating violence*⁴, which is violence committed by a person who is or has been in a social relationship of a romantic, sexual, or intimate nature with the individual. The existence of such a relationship shall be determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- iv. *Domestic violence*⁵, which is a felony or misdemeanor crime of violence committed by:
 - i. Current or former spouse or intimate partner of the victim;
 - ii. Person with whom the victim shares a child in common;
 - iii. Person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - iv. Person similarly situated to a spouse of the victim under the laws of the State of Iowa or the jurisdiction in which the incident reported occurred; and
 - v. Any other person against an adult or youth victim who is protected from that person’s act under the laws of the State of Iowa or the jurisdiction in which the incident reported occurred.

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- 2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
 - 3. Such other person is a child.

Iowa Code § 709.1. “Sex act” is defined under Iowa Code § 702.17 as: “any sexual contact between two or more persons by any of the following: 1. Penetration of the penis into the vagina or anus; 2. Contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; 3. Contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 151, or 152; 4. Ejaculation onto the person of another; 5. By use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.”

⁴ Iowa Code does not provide a per se definition for “dating violence.” The College’s definition of “dating violence” is consistent with the Title IX and the Clery Act regulations for reporting offenses.

⁵ Iowa Code does not define “domestic violence.” The College’s definition of “domestic violence” is consistent with Title IX and the Clery Act regulations for reporting offenses.

- v. *Stalking*⁶, which is engaging in a course of conduct toward another person under circumstances that would reasonably cause a person to fear bodily injury to themselves or others or to experience substantial emotional distress.

Determination as to whether the alleged conduct constitutes sexual harassment should take into consideration all of the circumstances, including the context in which the alleged incidents occurred. These definitions of terms used in this Policy are intended to track those in Title IX and the Clery Act. An act that might not fall within these definitions may still constitute misconduct, discriminatory harassment, and/or violate other College policy and/or codes of conduct.

Retaliation means: Taking an action (including intimidating, threatening, coercing, or discriminating) against an individual for seeking guidance, making a report, supporting a complainant or respondent, assisting in providing information relevant to a report or complaint, or filing a complaint under this Policy. It is also considered retaliation to interfere with any right or privilege afforded under Title IX.

B. Other Applicable Definitions:

Consent: “Consent” is defined as clearly communicating agreement or permission to participate in sexual activity. The consenting individuals must act freely and voluntarily and have knowledge of the act involved. Such consent may be withdrawn at any time, without regard to the preceding activity. A current or previous relationship, or past consent, is not sufficient to constitute consent. Consent may not be inferred from silence or passivity. Consent is voluntary, affirmative and clear. Consent cannot be given when a person is incapacitated. Coercion, force, or threats invalidate consent.

Incapacitation: 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). Incapacitation can result from the use of alcohol or other controlled substances, or from mental or physical incapacity. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, or impairment.

⁶ Under Iowa Code § 708,11, “stalking” occurs when:

A person commits stalking when all of the following occur: a. The person purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened or to fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person’s immediate family. b. The person has knowledge or should have knowledge that a reasonable person would feel terrorized, frightened, intimidated, or threatened or fear that the person intends to cause bodily injury to, or the death of, that specific person or a member of the specific person’s immediate family by the course of conduct.

Employees include full-time and part-time faculty and staff employed on campus or through a College program, activity, or event, including visiting faculty or adjunct instructors.

Education program or activity means locations, events, or circumstances where the College exercises substantial control over both the respondent and the context in which the alleged sexual harassment occurs.

Students include admitted students, as well as students who may not be on campus but are nonetheless considered an active or enrolled student at the College.

Confidentiality:

Hawkeye is committed to creating an environment that encourages those who have experienced any form of sexual harassment to come forward. The College will work to safeguard the personally identifiable information and privacy of those who seek help or who report sexual harassment. It is important that those reporting sexual harassment understand the limits on confidentiality of the individual who they may contact for such assistance. Different people, depending on their positions, have different obligations with regard to confidentiality.

The College will keep confidential the identity of any individual who has made a report or complaint of sexual harassment, or has been identified as the perpetrator or respondent to any such report or complaint, or is a witness to any complaint or investigation, **except** as required to carry out the purposes of this Policy (including the conduct of any investigation, hearing, or judicial proceeding), applicable law, or as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. However, complaints about violations of this Policy will be handled in strict confidence, with personally identifiable information protected and information made available only to those who need to know in order for the College to promptly and thoroughly investigate and resolve the matter. The College must balance the needs of individual students with its obligation to protect the safety and well-being of the community at large.

Under Iowa law, communications with some individuals are confidential. Those who want to maintain confidentiality should always confirm whether confidentiality applies to the communication before they make the communication. Generally, confidentiality applies when seeking services from the following persons:

- Trained and statutorily certified victim's advocates (such as individuals at crisis centers such as Riverview Center, Waypoint or Friends of the Family).
- Licensed psychological counselor (such as the mental health counselor in the Student Health Clinic).
- Licensed health care providers (including medical professionals at the Student Health Clinic).
- Personal attorney representing the victim.

- Religious/spiritual counselor.

Any other College employee-cannot guarantee complete confidentiality.

As noted above, the College must balance the needs of the individual students with its obligation to protect the safety and well-being of the community at large. Therefore, depending on the seriousness of the alleged incident, further action may be necessary, including a timely warning notice to the campus community. The notice would not contain any information identifying the person who brought the complaint. The College will also keep personally identifiable information out of public recordkeeping, including the College's Annual Security Report of Crime Statistics under the Clery Act.

Options for Assistance Following an Incident of Sexual Harassment:

1. Medical Attention and Evidence Preservation:

Seek medical attention at a local hospital or clinic, both for physical well-being and to preserve medical and physical evidence. A free, confidential medical examination from a Sexual Assault Nurse Examiner (SANE) can be obtained. Bathing, douching, smoking, changing clothing and cleaning the scene of the assault is discouraged before seeking medical attention.

Preserve other evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents if they have any that would be useful to College adjudicators/investigators or police.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining criminal/civil protective orders related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, they nevertheless should consider speaking with Campus Public Safety or other law enforcement to preserve evidence in the event that the victim decides to act at a later date.

2. Victim Advocacy, Confidential Reporting and Mental Health Counseling

Victims of sexual harassment may also want to contact an advocacy group for information and assistance, or seek mental health counseling. The following is a list of such resources on or accessible from the College area:

On Campus:

Hawkeye Community College Student Health Clinic (Mental Health Counseling with licensed providers)*
Health Education and Services Center Building
(319) 296-4224

Off-Campus:

Cedar Valley Friends of the Family*
319/234-0232 or 1-800-410-SAFE (7233)
<http://cvfriendsofthefamily.org>

Waypoint Services*
319/365-1458 or 1-800-208-0388
<http://www.waypointservices.org>

Riverview Center*
319/939-9599
<http://www.riverviewcenter.org>

Iowa Domestic Violence Hotline*
1-800-942-0333
www.cfiowa.org

National Domestic Violence Hotline*
1-800-799-SAFE (7233)
1-800-787-3224 (TTY)
Text LOVEIS to 22522
<http://www.thehotline.org>

**Denotes confidential resource.*

Reporting, Investigation and Disciplinary Procedures

1. Reporting to Law Enforcement:

The College strongly encourages victims to report instances of sexual harassment which constitute a crime to local law enforcement, but it is a victims' right to choose whether to make a report or decline law enforcement involvement. If making a report to law enforcement, whether on or off-campus, a report should be made to law enforcement in the applicable jurisdiction:

- For the College's main campus and any of Hawkeye's metro sites (Cedar Falls Center, IowaWorks—Cedar Valley, Van G. Miller Adult Learning Center), call the Black Hawk Consolidated Communications Center at (319) 291-2515 to be connected to the Black Hawk County Sheriff's Office, or Waterloo, Cedar Falls, Evansdale, Hudson, LaPorte City, Gilbertville and Dunkerton Police Departments.
- For the Independence Center, call the Buchanan County Sheriff's Office at (319) 334-2567 or the Independence Police Department at (319) 334-2520.
- For the Western Outreach Center, call the Grundy County Sheriff's Office at (319) 824-6933 to reach the Grundy County Sheriff's Office or Grundy Center Police Department.

In any emergency situation, law enforcement can always be reached by dialing 911. In addition, if the sexual harassment occurs on campus, Campus Security can be contacted at (319) 296-4234 for immediate assistance, and to provide help with reaching law enforcement.

Criminal acts may subject the perpetrator to criminal and civil penalties under federal and state law.

2. Reporting to the College:

To report an incident involving sexual harassment, whether it occurred on or off-campus, contact:

- The College's Public Safety Office: (319) 296-4234
- Title IX Coordinator** for Students: (319) 296-4448 equity-titleIX@hawkeyecollege.edu
- Nancy Henderson, Student Services Office – Hawkeye Center
- Title IX Coordinator** for Employees: (319) 296-4405 equity-titleIX@hawkeyecollege.edu
- Susan Hauber, Human Resource Services Office – Hawkeye Center

Any nonconfidential employee of the College who has the authority to institute corrective measures on behalf of the College must immediately report any known instances of sexual harassment to the Title IX Coordinator**. Otherwise, the College strongly encourages and expects all students, employees, or anyone with knowledge to report incidents of sexual harassment to one of the above referenced individuals. Confidential reporting resources are listed above.

The College encourages individuals to come forward as soon as possible to share concerns of sexual harassment. There is no time limit for a reports or complaints under the Policy, although the College's ability to investigate and respond fully may be limited with the passage of time.

3. Amnesty for Parties and Participants in Investigations

The College will not pursue disciplinary action for improper use of alcohol or other drugs against a student who reports or makes a complaint in good faith concerning an incident of sexual harassment, or who participates in good faith in an investigation into an incident of sexual harassment.

4. Interim Supportive/Protective Measures

After receiving a report or complaint of sexual harassment, the Title IX Coordinator** will promptly contact the Complainant to discuss the availability of interim supportive/protective measures and consider the Complainant's wishes, whether or not law enforcement is contacted or a formal complaint is filed. The College will also implement interim or supportive action for both parties during an investigation, or when requested by the Complainant (when reasonably available).

Supportive measures will be individualized, provided without fee or charge, are non-disciplinary in nature, and will not unreasonably burden either party. When putting supportive measures in place, the College will consider individually each situation and the circumstances presented.

Supportive/protective measures, when reasonably available, may include:

- Transfer of class sections;
- Assistance in exploring incompletes, leave or withdrawal;
- Changes in living, transportation or working arrangements;
- Safety Planning;
- Referral to counseling and health resources, and assistance with notifying law enforcement;
- Providing a mutual campus no-contact agreement/order.

Individuals may also pursue other civil or criminal no-contact/protective orders through the court system. The College will keep any protective measures confidential, to the extent confidentiality does not impair the College's ability to provide the measures.

In compliance with Iowa law, the College recognizes both criminal no-contact orders and civil protective orders. If you obtain an order of protection from the court in Iowa, you should provide a copy to the College's Public Safety office and a Title IX Coordinator***. You may then meet with College officials to develop a plan to reduce risk of harm while on campus or coming and going from campus. This plan may include, for example: escorts, special parking arrangements, changing classroom location, allowing a student to complete assignments from home, etc. The College cannot enforce a violation of a court order, but can assist an individual in contacting law enforcement to report a violation. If any terms of a court order are unclear in their application to the campus environment, it is up to the parties to seek clarification through the court – the College cannot render a legal opinion or give advice other than to develop a plan to reasonably prevent violations of the order.

5. Institutional Complaints (Formal Complaints)

When the College learns of potential sexual harassment, in most cases outreach will be done with the Complainant to identify reporting options (discussed earlier) within and outside the College and to offer supportive measures. The Title IX Coordinator** is available to meet to discuss those reporting options with the Complainant or answer questions from the Respondent.

To initiate the formal resolution process, the Complainant must file a formal complaint. A Complainant who proceeds with a formal complaint must do so in writing, and by filing a complaint with the Title IX Coordinator** by hard copy, email, or any other writing evidencing a physical or digital signature, or otherwise verifying the Complainant is filing the complaint. The Title IX Coordinator** will only initiate a formal complaint against the wishes of the Complainant where doing so is not clearly unreasonable based on known circumstances, based on the potential impact to the College community if the allegations were true. If the Title IX Coordinator** signs a formal complaint, the Title IX Coordinator** will not become a party or Complainant for purposes of the processes below.

To receive information regarding filing a formal complaint or to do so, contact the following:

For Students:

- Title IX Coordinator** for Students: (319) 296-4448 equity-titleIX@hawkeyecollege.edu
Nancy Henderson, Student Services Office – Hawkeye Center

For Employees:

- Title IX Coordinator** for Employees: (319) 296-4405 equity-titleIX@hawkeyecollege.edu
Susan Hauber, Human Resource Services Office – Hawkeye Center

As noted above, the College may or may not be able to honor all requests to keep the details or identities in a complaint of sexual harassment confidential, and will need to weigh the interests of the Complainant against its obligation to provide a safe, non-discriminatory environment for all

students and employees, including the complainant. If the College honors requests for confidentiality in the complaint process, a complainant must understand that the College's ability to fully investigate the incident and pursue disciplinary action against the respondent may be limited.

a. Dismissal and Consolidation of Formal Complaints

If, at any point of the resolution process, it becomes apparent that the allegations contained within a formal complaint of sexual harassment, even if true, would not meet the scope and/or definitions in the Policy and Title IX, the College will dismiss the complaint for purposes of processing under these procedures, but may proceed under a different policy or process for adjudication as the circumstances warrant.

Additionally, the College may, in its sole discretion, elect to dismiss any formal complaint of sexual harassment under the following circumstances:

- The complainant requests, in writing, the withdrawal of the formal complaint,
- The respondent is no longer employed or enrolled as a student at the institution, or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination or satisfy its own burden of proof in investigating and adjudicating a formal complaint of sexual harassment.

If the College elects to dismiss a formal complaint, all parties will be notified in writing of the decision, and will be given the opportunity to appeal the decision as set forth below.

The College may choose, at its sole discretion, to consolidate formal complaints where more than one Complainant and/or more than one Respondent is involved so long as the allegations of sexual harassment arise out of the same facts/circumstances. In such cases, the College may also choose to issue a single investigation report.

6. Formal Complaint Resolution Process:

Upon receipt of a formal complaint of Sexual Harassment, the College will proceed with the resolution procedures described below, and where appropriate, sanctions and corrective measures will be taken. All steps of the College's resolution procedures (including investigation and disciplinary procedures) will be prompt, fair, and impartial.⁷

Generally, the College will attempt to complete the formal complaint resolution process within 60 days. However, the time frames set forth in these procedures are meant to provide guidance, and the College may, as appropriate, alter or extend time frames for good cause, with written notice to the parties. The time it takes to complete the resolution of a sexual harassment complaint may vary based on the complexity of the investigation and the severity and extent of the alleged conduct, as well as

⁷ College officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking (and on how to conduct an investigation and process that protects the safety of victims and promotes accountability) will handle such complaints.

on whether there is a parallel criminal investigation, or if school breaks occur during the process.

a. Informal Resolution

In some cases, the Title IX Coordinator(s)** may determine, after receiving a formal complaint and conducting a review of the circumstances, that informal resolution may be an appropriate means of addressing reported behaviors and responding to the complainant's concerns. Informal resolution will only be pursued prior to the Decision-Maker(s) issuing a written decision on responsibility. Informal resolution will not be available to resolve allegations involving an employee sexually harassing a student. The College will not require the parties to participate in the informal resolution process as a condition of enrollment, continuing enrollment, or employment or continuing employment, or of any other right conferred by the College.

During the informal resolution process, the parties will be given the same opportunities to have others present for interviews or meetings, which includes the opportunity to be accompanied to interviews by a silent advisor of their choice. The Title IX Coordinator** will provide the parties with a written notice setting forth the allegations, the requirements of the informal resolution process set forth in this Policy, the right of any party to withdraw from the informal process and proceed with the formal process, at any time prior to agreeing to a resolution; and any consequences resulting from the participation in the informal process, including the records that will be maintained or could be shared by the College. Both parties must voluntarily consent in writing to participation in the informal resolution process.

Either party may, at any time prior to signing an informal resolution agreement, elect to end the informal resolution process and proceed with formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution will not be considered in the subsequent formal resolution. In order to promote honest, direct, communication, information disclosed during informal resolution must remain private while the informal resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

The Title IX Coordinator** or designee will attempt to aid the parties in finding a mutually acceptable resolution to the complaint. This resolution will be reduced to writing and must be signed by the Complainant and the Respondent. Once both parties have voluntarily signed the written resolution, the written resolution becomes final and neither party can initiate the formal process to resolve the allegations in the formal complaint. The written resolution is not subject to appeal.

Sanctions and/or supportive/protective measures may be taken as the result of an informal resolution process, if both parties agree to such measures. The College will retain a record of the resolution reached.

b. *Right to an Advisor*

Both a Complainant and a Respondent are given the opportunity to have support or advice through the reporting and if applicable, investigative and disciplinary processes. Either the Complainant or the Respondent may have an individual accompany them at their own expense to any meetings, interviews, or hearings related to the matter – these individuals are called “advisors.” The advisor may be a friend, victim advocate, lawyer, employee, family member, or other person chosen by the Complainant or Respondent. The roles and expectations of a person serving as an advisor are explained as follows:

- The advisor will keep private the information shared during meetings and throughout the investigation and adjudication process and will not disclose in any manner information shared or learned in the College process.
- It is up to the Complainant and Respondent to present their information in meetings, interviews, or hearings. Advisors cannot speak for an individual and do not have an active role during any meetings, interviews, or hearings, with the sole exception of conducting cross-examination on behalf of a party in a live hearing.
- Unless otherwise indicated, the College’s communication during the process will be with the Complainant and Respondent, not with the advisor directly.
- A Complainant or Respondent may use a different advisor at various stages in the process, especially if their chosen individual cannot be available for a scheduled meeting, interview, or hearing. The College will work to reasonably accommodate the advisors’ schedules, but will not unnecessarily delay the process due to the advisors’ conflicts.
- The College may remove an advisor if they unreasonably delay the process, or their presence is disruptive, obstructive, or otherwise interferes with the College’s handling of the matter. In such a case, the College will notify the Complainant or Respondent, who may seek another advisor.
- College policy prohibits retaliation against any individuals for filing a complaint or participating in the investigation of the complaint. An advisor is also protected by and subject to this retaliation prohibition. This means an advisor may not retaliate against any person participating in this process, nor may anyone retaliate against an advisor.
- The College will provide any party who does not have an advisor present to assist with cross-examination during the hearing with a College appointed advisor for the duration of that hearing, the selection of which is in the College’s sole discretion.

c. *Formal Resolution Process*

- *Investigators*

Formal complaints of alleged sexual harassment will be investigated by an Investigator or team of Investigator(s) assigned by the Title IX Coordinator**. The Investigator(s) may be internal or external to the College. If, prior to the initiation of the investigation, either the complainant or the respondent alleges that an Investigator(s) has a conflict of interest, after hearing from the party on the topic, the Title IX Coordinator** will decide whether to excuse

the Investigator and announce the decision in writing to both parties. If the Title IX Coordinator** determines that the Investigator should be excused, or if an Investigator is unavailable to conduct the investigation, the Title IX Coordinator** will appoint a replacement Investigator.

- Notice of Investigation

Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator** will prepare a notice of complaint to be provided simultaneously in writing to the parties which identifies:

- (1) The respondent;
- (2) The complainant;
- (3) The date(s), time, and location of the alleged sexual harassment;
- (4) A description of the allegation;
- (5) The specific provisions of this Policy that were allegedly violated;
- (6) The investigatory process that will follow;
- (7) Respondent's entitlement to a presumption of innocence;
- (8) The parties' rights to have an advisor of their choice at the party's expense, who may be an attorney; and
- (9) The parties' rights to review and comment on investigative evidence.

The written notice of investigation shall notify the parties that making false statements or knowingly submitting false information during the resolution process is prohibited by the College and may constitute an independent basis for disciplinary sanctions, up to and including suspension or expulsion of a student or termination of an employee's employment.

The notice shall be provided prior to the initial interview of any party, and within a sufficient amount of time to prepare. Parties will be also be provided advance notice in writing of the date, time, location, participants, and purpose of any interview, hearing, or meeting in the investigation and resolution process.

If, during the course of investigation, the College determines that additional allegations will be investigated as part of the pending complaint, the Title IX Coordinator** or designee will provide written notice of the additional allegations to any identified Complainant(s) or Respondent(s).

- Investigation Process

The burden of proof and the burden of gathering sufficient evidence to reach a determination of responsibility rests with the College and not with the parties. During the investigation, both the Complainant and Respondent:

- (1) Will be asked to present their version of events to the Investigator(s) and to

provide any supporting evidence.

- (2) Will have the same opportunities to have others present for interviews, which includes the opportunity to be accompanied to interviews by a silent advisor of their choice. The silent advisor will not be allowed to provide information to the Investigator(s) or ask questions of the party during the interview process.
- (3) Will be allowed to identify witnesses, including expert witnesses, all of whom will be interviewed by the Investigator(s) absent a compelling reason why such an interview cannot take place. If the Investigator(s) determines that an identified witness cannot or should not be interviewed, both parties will be informed in writing of this decision.
- (4) Will be notified of the witnesses identified by the other party and be given an opportunity to comment on those witnesses and identify rebuttal witnesses.

The order of the interviews will be determined by the investigator(s) based on the circumstances of each complaint.

Neither party will be restricted in their ability to discuss the allegations or to gather and present relevant evidence; provided, however, that such communications shall not constitute harassment of or retaliation against any party or witness.

In the event Complainant or Respondent request reasonable accommodations during the investigation process due to a disability, the investigator(s) will consult with the Title IX Coordinator.**

All investigations will be conducted as discretely as is practicable. Witness interviews might be audio recorded, and if so, all such recordings shall at all times remain the property of the College.

- *Review of Investigatory Evidence and Report*

Complainant and Respondent and, unless directed otherwise by the respective parties, their advisor, will be provided the opportunity to inspect all evidence directly related to the allegations of the formal complaint, including both inculpatory and exculpatory evidence, and evidence that the College does not intend to rely on in reaching a determination. The College may require both parties and their advisors to enter into a written agreement prohibiting the use or dissemination of evidence for any purpose other than those directly related to the parties' participation in resolution process.

Complainant and Respondent will be given *at least ten days* to inspect and review the evidence collected during the College's investigation and to submit a written response the Investigator(s) will consider in preparing a final investigation report.

The final investigation report will summarize the information and include any documents gathered. The investigative report will not include determination of responsibility for the

complaint itself. Complainant and Respondent will be given at least an *additional ten days* after receiving a copy of the investigation report to respond to it, in writing. In their written response to the investigation report, Complainant and Respondent may provide written comments regarding the relevance of the evidence included in or excluded from the investigation report, provide factual or other corrections to the report, and otherwise provide context for the report.

The final investigation report will be distributed, concurrently, to both of the parties and the Title IX Coordinator** at least ten (10) calendar days prior to a hearing to determine responsibility.

- *Live Hearing and Cross-Examination*

For purposes of adjudication of formal complaints of sexual harassment under the Policy and Procedures' scope, regardless of the identity of the parties involved, the College will conduct a live hearing prior to the issuance of a written decision report in accordance with the procedures below:

- 1) Appointment of Decision-Maker(s)

The College shall appoint one or more Decision-Maker(s) who are either internal or external to the College, but have been trained on the matters set forth in the Policy and procedures.

If there is more than one Decision-Maker, one of the Decision-Makers shall be designated to serve as Chair during the hearing. The Chair may be designated as a "non-voting" member of the Decision-Maker panel, meaning the Chair only conducts the hearing and assists the other Decision-Makers, but does not vote on responsibility. The Chair will preside over the hearing and determine whether information or questions of parties is relevant.

All procedural questions, including the decision to accept evidence and/or statements, will be made by the sole Decision-Maker or Chair, in their sole discretion.

- 2) Notice of Hearing

No less than ten (10) calendar days before the hearing, the Title IX Coordinator** will prepare and send the parties a written notice of the time and date of the hearing, as well as the identities of the Decision-Maker(s).

Within five (5) calendar days either the Complainant or Respondent may request, in writing to the Title IX Coordinator**, that the Decision-Maker(s) be recused because of an identified conflict of interest. The Title IX Coordinator** will hear from the party and determine if a conflict exists, and notify the parties in writing of the Title IX

Coordinator**'s decision. If the Title IX Coordinator** finds a conflict of interest, a replacement Decision-Maker will be appointed.

If a party requests or at the College's discretion, the entire hearing will be conducted with the parties in separate rooms with technology enabling the Decision-Maker(s) and parties to simultaneously see and hear the witness answering questions.

3) Notice of Witnesses

At least five (5) calendar days before the hearing, the Decision-Maker(s) will notify the parties in advance which witnesses (including Complainant or Respondent) they would like to be present at the hearing. The Decision-Maker(s) or designee will notify these witnesses of the hearing date and time and that their presence has been requested. Any witness called by the Decision-Maker(s) will also be expected to answer questions from the parties.

- a. When notifying the parties of these witnesses, the Decision-Maker(s) will also request the parties identify any additional witnesses they wish to have present at the hearing for cross-examination.
- b. The Decision-Maker(s) or designee will notify relevant witnesses of the hearing date and time and that their presence has been requested by the party for cross-examination. However, the College does not have "subpoena power" and cannot compel parties and witnesses to appear.

4) Proceedings

- a. The hearing is closed to the general public. The parties and their advisor will be allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing will be at the discretion of the Decision-Maker(s).
- b. There shall be no formal pleadings, legal memorandum, or motions filed in the hearing process.
- c. The Decision-Maker(s) will advise the parties if opening statement or closing statements are permissible.
- d. The College will record and/or create a transcript of all live hearings and will make that recording and/or transcript available to all parties for inspection or review.
- e. The College will make all evidence subject to inspection by all parties available at any hearing and will give each party equal opportunity to refer to that evidence at the hearing, including as part of cross-examination.
- f. Presentation of Evidence:
 - i. The hearing is not a second investigation of the allegations. In the hearing, the parties will be asked if they have any additional evidence they wish the Decision-Maker(s) consider, and if the parties wish to comment on the investigation report

- and evidence. Any new evidence presented by a party, if admitted as relevant, will be provided to the other party to review and provide comment;
- ii. Parties will be allowed, through their advisors, to cross-examine all other parties and any witnesses, including fact and expert witnesses, and to ask all relevant questions and follow-up questions including those challenging party or witness credibility, directly, orally and in-real time. Any party without an advisor will be appointed an advisor by the College, with selection of the advisor being at the sole discretion of the College;
 - iii. Only relevant questions may be asked of a party or witness. Before a party or witness answers a question, the Decision-Maker(s) will exclude any irrelevant question, with a brief explanation to explain the basis for finding the question irrelevant. Questions about prior sexual history will generally be deemed irrelevant with limited exceptions.
 - iv. The Decision-Maker(s) may ask questions, at any time, of the parties and of the witnesses.

The College will not allow Decision-Maker(s) to rely on any statements made by a party or witness in reaching his or her determination if that party or witness does not submit to cross-examination during a live hearing.

The Decision-Maker(s) will not draw an inference about responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions, nor give deference to the investigation report.

- *Standard of Proof*

The determination of whether or not sexual harassment occurred will be made on the basis of whether it is more likely than not that the Respondent violated the Policy. This standard is more formally referred to as the "preponderance of evidence" standard. In making its determination, the Decision-Maker(s) will carefully consider all of the evidence presented and follow the procedures stated in the Policy and any other applicable policies, procedures, rules, or handbook provisions in order to ensure as fair a hearing as possible for all parties.

- *Written Decisions*

The College Decision-Maker(s) will independently evaluate the evidence gathered. Written decisions will be provided simultaneously to the parties and include the following information:

- 1) allegations of sexual harassment,
- 2) procedural history (including specifics about notifications of hearings, meetings and interviews, methods used to gather evidence and hearings held),
- 3) findings of fact supporting the decision,

- 4) conclusions regarding application of policy to the facts,
- 5) rationale for the decision/finding of responsibility as it applies to each allegation,
- 6) disciplinary sanctions imposed on respondent, if any,
- 7) whether (but not the nature of) remedies designed to restore/preserve equal access to any or all education programs or activities that will be provided to the Complainant, and
- 8) procedure and permissible bases for appeal.

Decisions, including the imposition of any sanctions, will become final upon written notification to the parties of the outcome of an appeal or, if there is no appeal, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator** will be responsible for coordinating the effective implementation of remedies, as well as any non-punitive or non-disciplinary supportive measures imposed.

- Sanctions:

College sanctions may be imposed upon those determined to have violated this Policy. For students, sanctions include verbal reprimands, written warnings, probation, loss of privileges, fines, restitution, educational or work assignments, suspension, expulsion, revocation of admission, withholding a degree, or removal from courses.

For employees, sanctions could range from warning, reprimand, suspension with or without pay, suspension for part of a day or for a period of one (1) or more days, demotion, or termination of employment, and may include such other forms of disciplinary action as appropriate under applicable College procedures. If a final decision imposes disciplinary action which constitutes termination of college personnel entitled to the hearing/judicial review procedures of Iowa Code chapter 279, such procedures shall be followed as required by law.

A final decision may also include supportive/protective measures, including mutual no-contact orders or changes in arrangement to academic or working situations. The College will take steps to prevent recurrence of any sex discrimination/harassment and correct the effects of the discrimination, as appropriate.

- Appeals

The written decision of the Decision-Maker(s) shall be subject to appeal by both Complainant and Respondent. All parties have an equal right to appeal any final decision on the following bases so long as the bases of the appeal is significant enough to be reasonably expected to affect the outcome of the decision:

- A procedural irregularity within the investigation or adjudication process;
- New evidence not reasonably available when determination of responsibility was made;
- A conflict of interest or the bias of the Title IX Coordinator**, investigator or a decision-maker.

The College will notify all parties upon receipt of an appeal by any party alleging one of the bases for appeal above. Both parties will be given an opportunity to submit a written statement in support of, or challenging, the written determination. Written statements must be submitted to within five (5) business days.

The Appeal Decision-Maker(s) will determine if the decision and/or sanctions imposed will be stayed pending the outcome of the appellate decision. Except as required to explain the basis of new information, an appeal will be limited to a review of the verbatim record of the hearing and supporting documents.

The Appeal Decision-Maker(s) may affirm, reverse, or modify the decision regarding the violation and/or sanctions imposed. A written decision will be issued simultaneously to the parties describing the result of the appeal and the rationale therefor. The written appeal decision is the final decision of the College, and no further appeals are permitted under the Policy or these procedures.

7. Sexual Harassment Outside the Policy's Scope and Definitions

If a formal complaint is filed which alleges sexual harassment which falls outside the scope and definitions of this Policy and is dismissed, the Title IX Coordinator** will refer the complaint as appropriate for adjudication under another policy or process, such as the policy on Discriminatory Harassment or the Student Code of Conduct, as long as doing so would not interfere with any right or privilege provided to a party under Title IX.

To the extent the complaint alleges dating violence, domestic violence, stalking, or sexual assault which fall outside the scope of the Policy (e.g., the alleged conduct occurred outside the United States or without substantial control over the respondent and the context in which the conduct occurred), the College shall nonetheless provide the following procedural rights to the parties in the applicable adjudication process:

1. The parties will each have the opportunity to participate in the investigatory and disciplinary process which is overseen by properly trained individuals;
2. The parties will each have the opportunity to be advised by a personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. An advisor may only consult and advise his or her advisee, but not speak for the advisee at any meeting or hearing, except as expressly provided for in applicable procedures;
3. Decisions will be based on the preponderance of evidence standard. In other words, the investigator or adjudicator will determine if it more likely than not that the respondent violated the applicable policy;

4. The parties will be notified simultaneously in writing of the outcome of any disciplinary proceeding, as well as any changes to those results or disciplinary actions prior to the time that such results become final; and
5. If there is a right to appeal, the right is granted co-equally to the parties and the right will be explained in the applicable procedures. The parties will be notified simultaneously in writing of the final outcome of an appeal, if applicable.

College sanctions for such misconduct could include the range of sanctions detailed above.

Interplay with Criminal Proceedings

College disciplinary proceedings under this Policy may be instituted against an individual charged with sexual harassment that potentially violates both the criminal law and this Policy (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings at the discretion of the Title IX Coordinator**. Determinations made or sanctions imposed under this Policy will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

College conduct proceedings under this Policy are separate from criminal or civil litigation. Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used under this Policy.

Written Notifications

The College will provide written notification to College students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims of domestic violence, dating violence, sexual assault, and stalking, both within the institution and in the community.

The College will also provide this Policy to victims of domestic violence, dating violence, sexual assault, and stalking as a written notification about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures.

The College will also provide this Policy to a student or employee who reports to the College that the student or employee has been a victim of dating violence, domestic violence, sexual assault/abuse, or stalking, (whether the offense occurred on or off campus), as a written explanation of the student or employee's rights and options.

Training

Investigators, Decision-Makers, and other personnel involved in the process of investigating, responding, coordinating or otherwise assisting in the adjudication of complaints of sexual harassment will receive training as required on the topics of 1) impartiality, 2) avoiding prejudgment of facts at issue, 3) conflicts of interest and bias, 4) the College's resolution processes, 5) issues of relevance and evidence, 6) the scope of the College's educational programs and activities, and 7) types of sexual harassment.

College investigators will also be trained in writing investigation reports and decision-makers will be trained in conducting hearings, writing decisions and the technology used in hearings. The training materials used to perform these trainings will be published on the College's website and will ensure that relevant personnel are trained on issues related to sexual harassment and are taught how to conduct an investigation and hearing process that protects the rights, well-being, and safety of the parties, provides an equitable process for all parties involved, and promotes accountability.

****Title IX Coordinator:**

Please note that the Title IX Coordinator is charged with coordinating the College's response to reports of sexual harassment under this policy. The Title IX Coordinator does not serve as an advocate for either the complainant or the respondent. The Title IX Coordinator will explain to both parties the informal and formal processes outlined below and the provisions of confidentiality. Where appropriate, the Title IX Coordinator will provide to both parties information on options for obtaining advocacy, medical and counseling services, and making criminal reports, and will assist with providing information on other resources. The Title IX Coordinator will coordinate with other campus officials to take appropriate interim actions such as no contact orders and academic accommodations.

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