

# Defiance College

## Nondiscrimination Policy

Defiance College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Defiance College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: race, ethnicity, religion, national origin, sex, gender, gender identity/expression, sexual orientation, age, disability, genetic information, marital status, veteran status or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the College 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 the Defiance College policy on nondiscrimination

**Title IX Coordinator:**

**Lisa Marsalek, Vice President for Student Affairs and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

# Defiance College Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy

## INTRODUCTION AND RATIONALE FOR POLICY

Defiance College is a community of learners dedicated to nurturing the whole person in each of its members and affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. Defiance College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, sexual misconduct and retaliation. 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 enterprise, Defiance College has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status. Defiance College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in what is often a difficult time for all those involved.

### 1. Glossary

- *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 questioning for the party at the hearing, if any.
- *Appeal Decision-maker* means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action accordingly.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or 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 Defiance College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a calendar day.
- *Decision-maker* means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- *Directly Related Evidence* is evidence connected to the complaint but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the investigation report or the Decision-maker. Compare to Relevant Evidence, below.

- *Education Program or Activity* means locations, events, or circumstances Defiance College exercises substantial control over both the Respondent and the context in which the sexual harassment, discrimination and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the Defiance College.
- *Final Determination* is a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- *Finding is a conclusion* by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”)
- *Formal Complaint* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that the Recipient investigate the allegation(s).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by Defiance College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. §106.45) and the Violence Against Women Act § 304 .
- *Grievance Process Pool* includes any Investigators, Hearing decision-makers, Appeal Decision-Makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Informal Resolution* means a complaint resolution approved by the Parties that occurs prior to a formal Final Determination being reached.
- *Investigator* means the person(s) authorized by Defiance College to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- *Mandated Reporter* means an employee of Defiance College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Notice* means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of Defiance College who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Defiance College.
- *Parties* means the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process detailed below and defined above.
- *Process B* means the administrative resolution procedures detailed in Appendix E that only apply when Process A does not, as determined by the Title IX Coordinator.

- *Relevant Evidence* is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- *Remedies* are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Defiance College's education program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic; or retaliation for engaging in a protected activity under this Policy.
- *Resolution* means the result of an Informal Resolution or Formal Grievance Process.
- *Sanction* means a consequence imposed on a Respondent who is found to have violated this Policy.
- *Sexual Harassment* is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence. See Section 17.B. for greater detail.
- *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 Recipient.
- *Title IX Coordinator* is at least one official designated by Defiance College to ensure compliance with Title IX and the Defiance 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, any deputy coordinators, and any member of the Grievance Process Pool.

## **2. Rationale for Policy**

Defiance College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination and harassment based on a protected characteristic, and retaliation for engaging in a protected activity. Defiance College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Defiance College has developed 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 characteristic, and for allegations of retaliation.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged policy violation is reported, the allegations are subject to

resolution using Defiance College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Defiance College community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Defiance College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, vendors, contractors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

Defiance College recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other College policies; may involve various combinations of students, employees, and other members of the Defiance College community; and may require the simultaneous attention of multiple College departments. Accordingly, all Defiance College departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

#### **4. Title IX Coordinator**

The Vice President for Student Affairs serves as the Title IX Coordinator and ADA/504 Coordinator and oversees implementation of disability compliance, and the Defiance College's policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating Defiance College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy. All parties will be provided with a comprehensive brochure detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

##### **Title IX Coordinator:**

**Lisa Marsalek, Vice President for Student Affairs and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

#### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. 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 for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest, misconduct, or discrimination by the Title IX Coordinator contact the Defiance College President at 419-783-2300. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

#### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Title IX Coordinator:

**Lisa Marsalek, Vice President for Student Affairs and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or lmarsalek@defiance.edu

Trained Deputy Title IX Coordinators who can also offer assistance are available in the following offices:

**For Employees:**

**Mary Burkholder, Director of Human Resources**

106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2360 or mburkholder@defiance.edu

**For Students:**

**Matthew Gehring, Assistant Athletic Director for Compliance, Facilities, and Internships**

105H McMaster Center, 701 N. Clinton St., Defiance, OH 43152

(419) 783-2378 or mgehring@defiance.edu

**Jennifer Walton, Director of Residence Life**

132 Hubbard Hall, 701 N. Clinton St, Defiance., OH 43512

(419) 783-2563 or jwalton@defiance.edu

Defiance College has determined that the following administrators are Officials with Authority (OWA's) to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these OWA's may also accept notice or complaints on behalf of the Defiance College. List all Officials with Authority here:

**Tiffani Selhorst, Athletic Director**

105 McMaster Center, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2380 or tselhorst@defiance.edu

Defiance College has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

**Inquiries may be made externally to:**

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

**For complaints involving and employee-in-employee: Equal Employment Opportunity Commission (EEOC):**

Patrick V. McNamara Building  
477 Michigan Avenue  
Room 865  
Detroit, MI 48226  
United States  
1-800-669-4000

## **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

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

- 1) File a report or Formal Complaint with, or give verbal notice to, the Report directly to the Title IX Coordinator or Deputy Coordinators. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office, listed for the Title IX Coordinator or any other official listed.

### **Title IX Coordinator:**

**Lisa Marsalek, Vice President for Student Affairs and Dean of Students**  
128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512  
(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

### **Deputy Title IX Coordinators:**

**Mary Burkholder, Director of Human Resources**  
106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512  
(419) 783-2360 or [mburkholder@defiance.edu](mailto:mburkholder@defiance.edu)

### **Matthew Gehring, Assistant Athletic Director for Compliance, Facilities, and Internships**

105H McMaster Center, 701 N. Clinton St., Defiance, OH 43152  
(419) 783-2378 or [mgehring@defiance.edu](mailto:mgehring@defiance.edu)

### **Jennifer Walton, Director of Residence Life**

132 McCann Center, 701 N. Clinton St, Defiance, OH 43512  
(419) 783-2563 or [jwalton@defiance.edu](mailto:jwalton@defiance.edu)

### **Official with Authority:**

#### **Tiffany Selhorst Athletic Director**

105 McMaster Center, 701 N. Clinton St., Defiance, OH 43512  
(419) 783-2380 or [tselhorst@defiance.edu](mailto:tselhorst@defiance.edu)

- 2) Report online, using the reporting form posted at <https://www.defiance.edu/communication-information.html>. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The Defiance College tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and the Defiance College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows the Defiance College to discuss and/or provide supportive measures.

As used in this Policy, the phrase “Formal Complaint” means a document or electronic submission (such as by electronic mail) that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint, and requests that Defiance College investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **8. Supportive Measures**

Defiance College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge, to the parties to restore or preserve access to the Defiance College’s education program or activity, including measures designed to protect the safety of all parties and/or Defiance College’s educational environment, and/or to deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Defiance College will inform the Complainant, in writing, that they may file a Formal Complaint with College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

Defiance College will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the College’s ability to provide those supportive measures. Defiance College will act to ensure as minimal an academic/occupational impact on the parties as possible. Defiance College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator



Violations of no contact orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

## **9. Emergency Removal**

The Defiance College can act to remove a Student Respondent from its education program or activities -partially or entirely- 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.

When An emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause and 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 in a timely manner, 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 modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

Defiance 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 incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the above emergency removal process.

## **10. Promptness**

Once Defiance College has received notice of a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve, typically. There are always exceptions

and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the Defiance College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **11. Confidentiality/Privacy**

Every effort is made by Defiance College to preserve the confidentiality of reports.<sup>1</sup> The College will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA) or its implementing regulations, or as required by law; or to carry out the purposes of 34 C.F.R .Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Defiance College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Student Life, Campus Security, and the CARE Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Defiance College may contact parents/guardians of students 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.

Confidentiality and mandated reporting are addressed more specifically below.

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<sup>1</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Defiance College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the Defiance College’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the Defiance College’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Defiance College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 22. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

## 12. Jurisdiction of Defiance College

This Policy applies to Defiance College's education program or activities to conduct that takes place on the campus or on property owned or controlled by Defiance College, at Defiance College-sponsored events, and in buildings owned or controlled by Defiance College's recognized student organizations. The Respondent must be a member of Defiance College's community in order for this Policy to apply.

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

Regardless of where the conduct occurred, the Defiance College will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning or employment environments) or in an off campus sponsored program or activity. A substantial Defiance College interest includes:

1. 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.
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee or other individual.
3. 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.
4. Any situation that substantially interferes with the educational interests or mission of Defiance College.

If the Respondent is unknown or is not a member of the Defiance College community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the College can assist in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the Defiance College's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator

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

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

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 pursue actions under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external

to the Defiance College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Defiance College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Defiance College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2020. For incidents that occurred prior to August 14, 2020, previous versions of this Policy apply. Those versions are available from the Title IX Coordinator.

### **14. Online Harassment and Misconduct**

Defiance College policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Defiance College's education program and activities or when they involve the use of Defiance College networks, technology, or equipment.

Although Defiance College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content social media; sexual or sex-based messaging; distributing or threatening to distribute nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Defiance College community.

### **15. Policy on Nondiscrimination**

Defiance College adheres to all federal, state and local civil rights laws and regulations prohibiting discrimination in private higher education institutions.

#### **a. Protected characteristics**

Defiance College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of: race, ethnicity, religion, national origin, sex, gender, gender identity/expression, sexual orientation, age, disability, genetic information, marital status, veteran status or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies.

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

When brought to the attention of Defiance College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the appropriate grievance process described below.

**b. Inclusion Related to Gender Identity/Expression**

Defiance College strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including intersex, transgender, agender, and gender diverse students and employees.

Discrimination on the basis of gender identity or expression is not tolerated by the College. If a member of the Defiance College community feels they have been subjected to discrimination under this Policy, they should follow the appropriate reporting/Formal Complaint process described above.

In upholding the principles of equity and inclusion, Defiance College supports the full integration and healthy development of those who are transgender, transitioning, or gender diverse, and seeks to eliminate any stigma related to gender identity and expression.

Defiance College is committed to fostering a climate where all identities are valued and create a more vibrant and diverse community. The purpose of this Policy is to have the College administratively address issues some students and employees, including those identifying as intersex, transgender, agender, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the College's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the College's goal of being as welcoming and inclusive a community as possible.

Misgendering is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be. We all get to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, or gender diverse, their cisgender identity may be something that is in their past, dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, and gender diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all students equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the Recipient community

## **16. Disability Discrimination and Accommodation Policy**

Defiance 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 discrimination against qualified persons with disabilities, as well as other federal, state and local 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 Defiance 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 Title IX Coordinator has been designated as Defiance College's ADA/504 Coordinator 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. For details relating to disability accommodations in the Defiance College's Resolution Process, see page 81.

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

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

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Accessibility Services Coordinator, who coordinates services for students with disabilities.

The Accessibility Services Coordinator, using 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) in accordance with applicable College policies.

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

Pursuant to the ADA, Defiance 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 an accommodation request to the Director of Human Resources and providing necessary documentation. The Director of Human Resources 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 in accordance with applicable College policies.

### **17. Discriminatory Harassment Policy**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant 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.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Defiance College Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of College Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses

#### **a. Discriminatory Harassment**

Discriminatory harassment – defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristic protected by policy or law – is a form of prohibited discrimination under College policy.

Defiance College does not tolerate discriminatory harassment of any employee, student, visitor, or third party. 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, and/or physical conduct that is severe and pervasive and objectively offensive.

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

The Defiance 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 characteristic. Addressing such conduct will not result in the imposition of discipline under Defiance College policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Dean of Students/Title IX Coordinator.

## **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Ohio regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Defiance College has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual in nature that satisfies one or more of the following:

### **1) Quid Pro Quo:**

- a. an employee of the Defiance College,
- b. conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the Defiance College,
- c. on an individual's participation in unwelcome sexual conduct; and/or

### **2) Sexual Harassment:**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to Defiance College's education program or activity<sup>2</sup>

### **3) Sexual Assault, defined as:**

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<sup>2</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.



- a. Any sexual act<sup>3</sup> directed against a Complainant<sup>4</sup>:
    - without their consent, or,
    - in instances in which the Complainant is incapable of giving consent.
  - b. Incest:
    - Non-forcible sexual intercourse,
    - between persons who are related to each other,
    - within the degrees wherein marriage is prohibited by Ohio law.
  - c. Statutory Rape
    - Non-forcible sexual intercourse,
    - with a person who is under the statutory age of consent of 16.
- 4) **Dating Violence**, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the

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<sup>3</sup> A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

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.

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<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

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.

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.

<sup>4</sup> This would include having another person touch you sexually, forcibly, or without their consent.

relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

- a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b. Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Ohio
- g. 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 Ohio.

6) **Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

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.

Defiance 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. The most serious offenses are likely to result in suspension/expulsion/termination.

**c. Force, Coercion, Consent, and Incapacitation<sup>5</sup>**

As used in the offenses above, the following definitions and understandings apply:

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<sup>5</sup> The state of Ohio does not specifically define "consent". However, for the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception. The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

**Force:** Force is 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,” which elicits the response, “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.

**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.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

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.

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. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

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 reasonably immediate time.

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. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on Defiance College to determine whether its 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 misconduct occurred and any similar previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>6</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus Defiance College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

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 that assumes that a reasonable person is both sober and exercising sound judgment.

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, and how” of their sexual interaction).

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.

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 substances.

#### **Protection of Minors**

In Ohio, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, could require an immediate report to the applicable child welfare agency, and represents a potential violation of this policy, even if the minor welcomed the sexual activity.

Employees who witness or otherwise have reasonable cause to believe that an incident of sexual or physical abuse involving a minor has occurred at the College or in a College-sponsored program or activity, must immediately report that knowledge or belief. This reporting obligation exists regardless of whether or not the alleged perpetrator is an employee of the College.

#### **d. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, the College additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived protected characteristic.

##### **1) Sexual Exploitation, defined as:**

- a) an individual taking non-consensual or abusive sexual advantage of another
- b) for their own benefit for the benefit of anyone other than the person being exploited,
- c) and that conduct does not otherwise constitute Sexual Harassment under this Policy.

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<sup>6</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

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

- 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)
  - Invasion of sexual privacy (e.g., doxxing)
  - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other 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 non-consensual pornography
  - Prostituting another person
  - 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 virus, disease or infection
  - 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
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
  - 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
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Knowingly creating, possessing, or disseminating child pornography
- 2) **Harm to Persons**, intentional or recklessly causing physical harm or endangering the health or safety of any person;
  - 3) **Threat**, defined as written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property;
  - 4) **Discrimination**, defined as any act or failure to act that is based upon an individual or group's actual or perceived status (sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status) that is sufficiently severe that it limits or denies the ability to participate in or benefit from the College's educational program or activities.
  - 5) **Harassment**, Any unwelcome conduct based on actual or perceived status including: sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status;
  - 6) **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
  - 7) **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
  - 8) **Bullying and Cyberbullying**, defined as repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally and are not protected by freedom of expression.

Violation of any other Defiance College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived protected characteristic, 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 warning through expulsion/termination.

### **18. Retaliation**

Protected activity under this policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, 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. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Defiance College and any member of the Defiance College community are prohibited from taking or attempting 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.

Filing a complaint under Process B could be considered retaliatory if those allegations could be subject to Process A, when the Process B allegations are made for the purpose of interfering with or circumventing any right or privilege provided within Process A that is not provided by Process B. Therefore, Defiance College carefully vets all complaints to ensure this does not happen, and to ensure that complaints are routed to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **19. Mandated Reporting**

All Defiance College employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination, harassment and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Failure of a non-confidential employee, as described in this section, to report an incident of harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution 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 alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

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

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

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

- Director of Counseling & Accessibility Services, Kris Knight: 419-783-2548
- Accessibility Services Coordinator and Staff Clinician, Jessica Flores 419-783-2445
- To access a SANE (Sexual Assault Nurse Examiner) after normal business hours, contact Kris Knight, confidential Victim's Advocate: 419-783-2562
- Four County SART Program: 1-800-782-8555
- Ohio Sexual Violence Helpline 1-888-OHIO-HELP
- 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 or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Defiance College employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles, will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client.

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

At the request of a Complainant, notice may be given anonymously to the Title IX Coordinator by a Mandated Reporter. 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 Defiance 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 Defiance 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

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

All College employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees 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 "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX 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, discrimination or retaliation of which they become aware is a violation of Defiance College Policy and can be subject to disciplinary action for failure to comply/failure to report.

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 simply because 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.

## **20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/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 institution and to comply with state or federal law.

The Title IX Coordinator 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 grievance process.



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. Defiance Colleges 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 Defiance College's ability to pursue a Formal Grievance Process 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 (and/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. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant though this does not extend to the provision of evidence or testimony.

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

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Defiance College to honor that request, the College may offer Informal Resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they 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 Defiance College and to have the incidents investigated and properly resolved through these procedures.

## **21. Federal Timely Warning Obligations**

Defiance College must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Defiance 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.

## **22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence; tampering with or destroying evidence after being directed to preserve such evidence; or deliberately misleading an official

conducting an investigation, hearing or informal resolution can be subject to discipline under appropriate College policies.

### **23. Amnesty**

The Defiance College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Defiance College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Defiance College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

#### **A. Students**

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to College officials or the hospital).

Defiance College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the Def College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

#### **B. Employees**

Sometimes, employees are hesitant to report harassment, discrimination, or retaliation they have experienced for fear that they may get in trouble themselves. The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

### **24. 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):

- 1) All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) 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

- 3) VAWA<sup>7</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking
- 4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the Dean of Students 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.

Campus Security Authorities include: cabinet members, student affairs/student conduct staff, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **25. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders, and is particularly time-sensitive. The College will inform the Complainant of the importance of preserving evidence by taking the following actions:

### **Sexual Assault:**

- Seek forensic medical assistance at the hospital or by calling 419-783-2562 to access a SANE nurse, ideally within 120 hours of the incident (sooner is better)
- Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- Try not to urinate.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **Stalking**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail correspondence, including notifications related to account access alerts.
- Take time stamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages showing a request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.
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During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

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<sup>7</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY (KNOWN AS PROCESS “A”)**

### **1. Overview**

Defiance College will act on any formal complaint of violation of the Equal Opportunity, Harassment, Sexual Misconduct and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If other policies are invoked, such as policies on protected characteristic harassment or discrimination as defined above, please see Appendix E for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another) when alleged violations of this Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the campus official typically overseeing such conduct (e.g., human resources, student conduct, academic affairs, etc) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student and employee handbooks.

### **2. Notice/Complaint**

Upon receipt of a complaint or notice of an alleged policy violation to the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed file a Formal Complaint; and/or
- 2) An Informal Resolution; (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submissions of a Formal Complaint).

Defiance College uses a Formal Grievance Process as described below to determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

### 3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>8</sup> engages in an initial assessment, typically within one to five (1-5) business days in duration. The steps in an initial assessment can include:

- 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 desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves.
- 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.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue.
    - If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly, including referring the matter under Process B, if applicable. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX which does not limit the Defiance College’s authority to address a complaint with an appropriate process and remedies.

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<sup>8</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

## A. Violence Risk Assessment (VRA)

In some cases, the Title IX Coordinator may determine that a VRA should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or community's physical health/safety;
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;
- 3) Whether the scope of the investigation should include an incident and/or pattern of misconduct and/or climate of hostility/harassment;
- 4) To help identify potential predatory conduct;
- 5) To help assess/identify grooming behaviors;
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful;
- 7) Whether to permit a voluntary withdrawal by the Respondent;
- 8) Whether to impose transcript notation or communicate with a transfer College about a Respondent;
- 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- 10) Whether a Clery Act Timely Warning/Trespass Order/Persona-Non Grata is needed.

Threat assessment is the process of evaluating the action-ability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the Defiance College's process for VRA can be found below in Appendix D.

## B. Dismissal (Mandatory and Discretionary)

Defiance College must dismiss a Formal Complaint or any allegations therein if, at any time during

the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Policy above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the Defiance College (including buildings or property controlled by recognized student organizations), and/or the Defiance College does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the College's education program or activity.

Defiance College may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by the College
- 3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, Defiance College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal (see page 53).

#### **4. Counterclaims**

Defiance College is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews and hearings 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>9</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 by the hearing Decision-maker(s).

The Defiance College may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

#### **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 Defiance College community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will have been 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 Defiance College 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. Advisor's Role in Meetings and Interviews**

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 Recipient is not obligated to provide an attorney.

#### **C. Advisors in Hearings/Recipient-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the Recipient will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

#### **D. Pre-Interview Meetings**

Advisors may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Defiance College's policies and procedures.

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<sup>9</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.



## **E. Advisor Violations of Defiance College Policy**

All Advisors are subject to the same Defiance College policies and procedures, whether they are attorneys or not and whether they are selected by a party or assigned by the College. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Defiance College officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>10</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during questioning.

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 generally 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, or who refuses to comply with the College's established rules of decorum for the hearing, will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor or providing a different College-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **F. Sharing Information with the Advisor**

Defiance College expects that the parties may 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 or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Defiance College also provides a consent form that authorizes the Defiance College to share such information directly with the party's 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 Defiance College is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the College will comply with that request at the discretion of the Title IX Coordinator.

## **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 Defiance College. Defiance 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 Defiance College's privacy expectations.

## **H. Expectation of an Advisor**

Defiance College generally expects an Advisor to adjust their schedule to allow them to attend College meetings/interviews/hearings when planned but the College may change scheduled

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<sup>10</sup> Subject to the state law provisions or Defiance College policy above.

meeting/interviews/hearings 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 be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **I. Expectations of the Parties with Respect to Advisors**

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 inform the Investigator(s) 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).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. 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 should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **J. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with Defiance College Policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution, discussed below. The College encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the College's primary resolution approach unless Informal Resolution is elected by all parties and the College. Three options for Informal Resolution are detailed in this section and the Formal Grievance Process is detailed starting in the next section.

#### **A. Informal Resolution**

Three options for Informal Resolution are detailed in this section.

- 1) *Supportive Resolution*. When the Title IX Coordinator can resolve the matter informally by

providing supportive measures (only) to remedy the situation.

- 2) *Alternative Resolution*. When the parties agree to resolve the matter through an alternative resolution mechanism as described below, including mediation, restorative practices, facilitated dialogue, etc., as described below, often before a formal investigation takes place; (See section B)
- 3) *Accepted Responsibility*. When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (See Section C).

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree as a condition of engaging in Informal Resolution that statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may not enter into an agreement that requires the Recipient to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is "Accepted Responsibility." The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Defiance College.

Defiance College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **B. Alternative Resolution Approaches**

Alternative Resolution is an informal approach by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity

- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Informal Resolution or Alternative Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Defiance College policy and implements agreed-upon restrictions and determines the appropriate sanctions in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanctions or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **7. Formal Grievance Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process.

The list of Pool members and a description of the Pool can be found at <http://www.defiance.edu/student-life/info/campus-safety-and-compliance.html>

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution
- To investigate complaints

- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint
- To serve as an Appeal Decision-maker

## **B. Pool Member Appointment**

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, Defiance College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

## **C. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the Defiance College's Equal Opportunity, Discrimination, Harassment and Sexual Misconduct Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Defiance College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics.
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for all Pool Members. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: <http://www.defiance.edu/student-life/info/campus-safety-and-compliance.html>

#### **D. Pool Membership**

The Pool includes:

Sidney Faine  
Nicole Hoffman  
Matthew Gehring  
Collette Knight  
Jack Lawson  
Lisa Marsalek  
Nat Shingler  
Jeremy Taylor  
Jennifer Walton  
Bridgette Winslow

Pool members are appointed by the Title IX Coordinator. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

External, trained third-party neutral professionals may also be used to serve in pool roles.

#### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations
- The identity of the involved parties (if known)
- 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 the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about Defiance College’s policy on retaliation
- Information about the confidentiality 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 Resolution Process

- A link to the Defiance College's VAWA Brochure
- The name(s) of the Investigator(s), along with a process to identify, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice 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(es) of the parties as indicated in official Defiance College records, or emailed to the parties' Defiance College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

Defiance College will make a good faith effort to complete the Resolution Process within a sixty-to-ninety (60-90) business day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether 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. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Defiance College President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence that 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.

Defiance 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 applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement etc.

Defiance College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Investigation Process Delays and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The College will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The College will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

Defiance College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. Recordings of interviews are not provided to the parties, but the parties will have the ability to review the transcript/summary of the interview once the investigation report is compiled.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation



- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Defiance College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, and Respondent's Advisor).
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days

prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report

### **15. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the College are expected to cooperate with and participate in the College's investigation and Resolution Process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside Defiance College are encouraged to cooperate with the College's investigations and share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, Google Meet, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The Defiance College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **16. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of audio and/or video recording.

### **17. Evidentiary Considerations in the Investigation**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, 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.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) calendar days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker [or Decision-makers] from the Pool

and provide a copy of the investigation report and the file of directly related evidence. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

### **19. Hearing Decision-maker Composition**

The Defiance College will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

### **20. Additional Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, 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.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming the Recipient uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Hearing Notice**

No less than ten (10) calendar days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or a conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording 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. For compelling reasons, the Chair 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 one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the Defiance College will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the complaint 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(S) 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) calendar days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) calendar days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) calendar days prior to the hearing so that appropriate arrangements can be made.

### **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) calendar days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) calendar days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) calendar days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing 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/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation 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 rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/advisor, with all parties/advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) have 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 those collateral allegations may not specifically fall within the Policy on Equal Opportunity, Harassment, Discrimination and Sexual Misconduct.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator if deemed necessary, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations, interpretation or assistive services.

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 to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by a non-voting hearing facilitator/case manager 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.

## **28. Investigator Presentation of the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) 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(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations. 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.

## **29. Testimony and Questioning**

Once the Investigator(s) present(s) the report and respond to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

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 if agreed to by all the parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements 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 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 at the hearing, the Chair may elect to address those issues, 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.

### **30. Refusal to Submit to Questioning; Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

### **31. Hearing Recordings**

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(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator upon request. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a 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 is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the Dean of Student or Director of Human Resources and will determine the appropriate sanction(s).

The Chair will then prepare a written statement detailing all findings/final determinations, the rationale(s) explaining the decision(s), the evidence used in support the determination, the evidence not relied upon in the determination, any credibility assessments, and any sanctions [or recommendations] and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator

This statement typically should not exceed three to five (3-5) 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.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the 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 Defiance 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 articulate the specific alleged policy(ies) violations 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.

The Notice of Outcome will specify the finding for 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 to the extent the Defiance College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant designed to ensure access to the College's educational or employment program or activity.

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

#### **34. Statement of the Rights of the Parties (See Appendix C)**

#### **35. 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
- 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(s)

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.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

## A. Student Sanctions

The following are the common sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** An official written notice that the student has violated College policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the College.
- **Restitution:** Compensation for damage caused to the College or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
- **Fines:** Reasonable fines may be imposed. Fines are specified to include: \$100 for intentionally or negligently activating a fire alarm.
- **Community/College Service Requirements:** For a student or organization to complete a specific supervised Community/College service.
- **Loss of Privileges:** The student will be denied specified privileges for a designated period of time.
- **Confiscation of Prohibited Property:** Items whose presence is in violation of College policy will be confiscated and will become the property of the College. Prohibited items may be returned to the owner at the discretion of the Dean of Students (or designee).
- **Behavioral Requirement:** This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- **Educational Program:** Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- **Restriction of Visitation Privileges:** May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- **College Housing Probation:** Official notice that, should further violations of Residence Life or College policies occur during a specified probationary period, the student may immediately be removed from College/housing. Regular probationary meetings may also be imposed.
- **College Housing Reassignment:** Reassignment to another College housing facility. Residential Life personnel will decide on the reassignment details.
- **College Housing Suspension:** Removal from College housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to College housing may be specified. Under this sanction, a student is required to vacate College housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Residence Life. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for College housing, the student must gain permission from the Director of Residence Life (or designee). This sanction may include restrictions on visitation to specified buildings or all Defiance housing during the suspension.
- **College Housing Expulsion:** The student's privilege to live in, or visit, any College housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.

- College Probation: The student is put on official notice that, should further violations of College policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
- Eligibility Restriction: The student is deemed “not in good standing” with the College for a specified period of time. Specific limitations or exceptions may be granted by the Dean of Students and terms of this conduct sanction may include, but are not limited to, the following:
  - Ineligibility to hold any office in any student organization recognized by the College or hold an elected or appointed office at the College; or
  - Ineligibility to represent the College to anyone outside the College community in any way including: participating in the study abroad program, attending conferences, or representing the College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
- College Suspension: Separation from the College for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Dean of Students. During the suspension period, the student is banned from property, functions, events and activities without prior written approval from the Dean of Students. This sanction may be enforced with a trespass action as necessary.
- College Expulsion: Permanent separation from the College. The student is banned from property and the student’s presence at any College-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary.
- Withholding Diploma: The College may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement 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 awarded from the College for fraud, misrepresentation, 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.
- Other Sanctions: Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Dean of Students or designee.

## B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student 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.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the 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 and event privileges, denial of College funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student

organization may not conduct any formal or informal business or participate in College-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.

- **Expulsion:** Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- **Loss of Privileges:** Restricted from accessing specific College privileges for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the Recipient may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

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

- Verbal or Written Warning
- Performance Improvement/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

## **36. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a Respondent decide not to 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 typically ends with a dismissal, as the Recipient has lost primary disciplinary jurisdiction over the withdrawn student. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns 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 Defiance College in any capacity. Admissions and Human Resources will be notified, accordingly. They may also be barred from Defiance College property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to Defiance College unless and until all sanctions, if any, have been satisfied.

## **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the resigned employee. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

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

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

## **37. Appeals**

Any party may submit a written request for appeal (“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 letter.

A single Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator to Chair the appeal. No appeal Decision-maker will have been involved in the process previously, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair or designee 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.

### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) A procedural irregularity that affected the outcome of the matter
- 2) 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
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) 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.

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 Appeal 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 all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator (s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for an Appeal 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, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses and the Appeal Chair will render a decision in no more than 3 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

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.

## **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e. not implemented) 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 but pre-appeal, then emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, Defiance College may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal when the original sanctions included separation. The Respondent may request a stay of these holds from

the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee whose decision is final.

### **C. Appeal Considerations**

- 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.
- Decisions on appeal are to be deferential to the original determination, 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.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing
- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Chair/Decision-maker(s) may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-maker roles.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to Defiance 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.

### **38. 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 institutional 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 campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations 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 the College owes the Respondent to ensure no effective denial of educational access.

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

### **39. Failure to Comply with Sanctions 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(s) (including the Appeal Chair/Decision-Makers).

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 Defiance College. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

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

### **40. Recordkeeping**

Defiance College will maintain for a period of at least seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- 2) Any disciplinary sanctions imposed on the Respondent;
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
- 4) Any appeal and the result therefrom;
- 5) Any Informal Resolution and the result therefrom;
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Defiance College will make these training materials publicly available on Defiance College's website; and
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a) The basis for all conclusions that the response was not deliberately indifferent;
  - b) Any measures designed to restore or preserve equal access to the College's education program or activity; and
  - c) If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Defiance College will also maintain any and all records in accordance with state and federal laws.

### **41. Disability Accommodations in the Resolution Process**

Defiance College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's Resolution



Process.

Anyone needing such accommodations or support should contact the Accessibility Services Coordinator or Director of Human Resources for employees, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing harassment, sexual misconduct, discrimination, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Defiance 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. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

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 laws or regulations or court holdings.

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

This Policy and procedures are effective July 10, 2023. Revised 12.19.23.

## APPENDIX A: PROHIBITED CONDUCT EXAMPLES

### Examples of possible sexual harassment:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to nonbinary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being nonbinary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their gender identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

### Examples of Stalking

- Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go, and relentlessly pursued student B. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX

Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

#### Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.

- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B: DEFIANCE COLLEGE FRAMEWORK FOR INFORMAL RESOLUTION (IR)**

Defiance College has framed a process for IR that includes:

- 1) A response based on supportive measures
- 2) A response based on a Respondent accepting responsibility
- 3) A response based on informal resolution, which could include various approaches and/or facilitation of dialogue.

Here are the principles to be considered in supporting various approaches to Informal Resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but should be only be cautiously considered for violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversionary resolution (although a formal complaint must be filed if you are within Section 106.30, per OCR).
- IR-based processes could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternative Resolution approaches to IR must be facilitated by the College or a third party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the Informal Resolution process may be deemed to have failed.
- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. Evidence elicited within the "safe space" of the IR facilitation could be later admissible in the formal resolution unless all parties determine it should not be. This will be clearly spelled out as a term of the decision to engage in the IR process.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.
- IR can result in an accord or agreement between the parties (Complainant, Respondent, and Defiance College) which is summarized in writing by and enforced by the College. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties that are enforceable by the College. These can be part of the accord/agreement.
- As a secondary goal, IR can result in the voluntary acceptance of "sanctions," meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other

restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by the College as part of the accord/agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.

- Although a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.

#### **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination and/or retaliation made in good faith to Defiance 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 by the College of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by the College to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Defiance College officials.
- The right to have Defiance College policy and these 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 Defiance College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by Defiance College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College 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 Defiance College law enforcement and/or other Defiance 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; and/or other services, both on campus and in the community.
- The right to a Defiance College-implemented no-contact order or a no-trespass order against a non-affiliated third party 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 institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from Defiance College staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any College meeting or interview involving the other party, when possible.
- The right to identify and have the Investigator(s), Advisor(s) and/or Decision-maker(s) to identify and question relevant available 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)/Decision-Maker, may be asked of any party or witness.
- The right to have inadmissible sexual predisposition/prior sexual history or irrelevant character evidence excluded by the decision-maker.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a 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 all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10) calendar day period to review and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) calendar days to review and comment on the report prior to the hearing.

- 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.
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of confidentiality/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 Defiance 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/Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact and/or mitigation 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 of the finding(s) and sanction(s) of the Resolution Process (if any) and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by Defiance College is considered final and any changes to the final determination or sanction(s) that occur post Notification of Outcome.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of 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.

#### **APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the action-ability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of risk factors that escalate the potential for violence;
- 2) A determination of stabilizing influences that reduce the risk of violence;
- 3) A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and action-ability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
- 4) The application of intervention and management approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE Team. The CARE Team will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor will follow the process for conducting a violence risk assessment as outlined in the CARE Team manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,<sup>11</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>12</sup> The Extremist Risk Intervention Scale (ERIS),<sup>13</sup> Looking Glass,<sup>14</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>15</sup> Historical Clinical Risk Management (HCR-20),<sup>16</sup> and MOSAIC.<sup>17</sup>

The VRA is conducted independently from the Title IX process, informed by it, but free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CARE Team member conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

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<sup>11</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>12</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>13</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>14</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>15</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>16</sup> [hcr-20.com](http://hcr-20.com)

<sup>17</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)



## **APPENDIX E: PROCESS B**

- Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.
- Defiance Colleges can substitute any alternative process instead of Process B, if desired.

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, DISCRIMINATION AND SEXUAL MISCONDUCT POLICY**

Defiance College will act on any formal or informal allegation or notice of violation of the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment, discrimination and/or retaliation on the basis of protected characteristic status involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

### **1. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of Defiance College's nondiscrimination policy, the Title IX Coordinator engages in an initial assessment, which is typically one (1) to five (5) business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator works with the Complainant to determine which of three options to pursue: A Supportive Response, and Information Resolution or and Administrative Resolution.
  - If a Supportive Response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
    - Incident, and/or
    - A potential pattern of misconduct, and/or
    - A culture/climate issue.
- In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Interim suspension of a Respondent who is a threat to health/safety;
- Whether the Title IX Coordinator should pursue Administrative Resolution absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potentially predatory conduct;
- To help assess/identify grooming behaviors;
- Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer recipient about a Respondent;
- Assessment of appropriate sanctions/remedies;
- Whether a Clery Act Timely Warning and/or Trespass Order/Persona-Non Grata is needed.

More about the Defiance College’s process for VRA can be found in Appendix D.

Based on the initial assessment, Defiance College will initiate one of these responses:

- Supportive Response – measures to help restore the Complainant’s education access, as described in the Policy.
- Informal Resolution – typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Administrative Resolution – investigation of alleged policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator and the opportunity to appeal to the Appeal Decision-Maker(s).

The investigation and the subsequent Administrative Resolution determine whether the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. If 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 policy has been violated, the process will end, and the parties will be notified.

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.

## **2. Resolution Process Pool**

The Resolution Process relies on a pool of officials (“Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students and their parents/guardians, employees, prospective students, and prospective employees.

The list of members and a description of the Pool can be found at <http://www.defiance.edu/student-life/info/campus-safety-and-compliance.html> Members of the Pool

are trained annually in all aspects of the Resolution Process and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve as an Appeal Decision-Maker

The Title IX Coordinator, in consultation with the President, carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.

Pool members receive annual training organized by the Title IX Coordinator, including a review of Defiance College policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members receive annual training specific to their role. This training includes, but is not limited to:

- The scope of the Defiance College's Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and Resolution Processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or Complainants, and on the basis of sex, race, religion, and other protected characteristics.
- Any technology to be used

- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

The Resolution Process Pool includes:

Mary Burkholder  
Collette Knight  
Matt Gehring  
Nicole Hoffman  
Jack Lawson  
Lisa Marsalek  
Jeremy Taylor  
Nat Shingler  
Jennifer Walton  
Bridgette Winslow

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

External, trained third-party neutral professionals may also be used to serve in pool roles.

### **3. Counterclaims**

Counterclaims by the Respondent may be made in good faith or may instead be motivated by a retaliatory intent. Defiance College is obligated to ensure that any process is not abused for retaliatory purposes.

The College permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation. Counterclaims made with retaliatory intent will not be permitted.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

### **4. Advisors**

#### **A. Advisor Expectations**

The College generally expects an Advisor to adjust their schedule to allow them to attend Defiance College meetings when planned, but the College may 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.

Parties whose Advisors are disruptive or who do not abide by Defiance College policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting College meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

### **B. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor who is eligible and available<sup>18</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. 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 inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

Upon written request of a party, the College will copy the Advisor on all communications between the Defiance College and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records

At the discretion of the Title IX Coordinator, more than one Advisor may be permitted to the parties, upon request. For equity purposes, if one party is allowed another Advisor, the other party must be allowed one to as well.

### **C. Assistance in Securing an Advisor**

Defiance College will provide a Process Advisor if a student does not have an advisor but wishes to have one.

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]

## **5. Resolution Options**

Proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accord with Defiance College Policy.

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<sup>18</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.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

## **A. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution (mediation, restorative practices, facilitated dialogue etc.,) when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation. The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Administrative Resolution may be pursued.

### **i. Alternative Resolution Approaches**

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts, as appropriate. The parties must consent to the use of Alternative Resolution.

The Title IX Coordinator determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator or third party facilitates communication among the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though similarly structured conversations may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternative Resolution are not appealable.

### **i. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent accepts responsibility, the Title IX Coordinator determines that the individual is in violation of College policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are

promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented, the process is over. The Complainant [may be consulted on and] will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

#### **a) Administrative Resolution via and Investigation**

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, 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 Defiance College records, or emailed to the parties' College-issued or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification will include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

The College aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of

interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the Defiance College President.

Investigations are completed expeditiously, normally within 10-20 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The College will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the Defiance College's Resolution Process are being investigated by law enforcement. The College will promptly resume its investigation and Resolution Process once notified by law enforcement that the initial evidence collection process is complete.

Defiance College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

## **6. Investigation**

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with institutional partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegations (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.



- Notice should inform the parties of their right to have the assistance of a Pool member as a process Advisor appointed by the College or an Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written 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
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish for the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 calendar days and incorporate that response, if any, into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator or legal counsel for review and feedback.
- Provide the final report to the Title IX Coordinator with one of two options:
  - In the report, include a recommended determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred; OR
  - Gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation.

## **7. Determination**

Within two to three business days of receiving the Investigator's recommendation, the Title IX Coordinator or a trained, designated Decision-maker from the Pool<sup>19</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

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<sup>19</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated from the Pool to ensure there is no conflict of interest.

The investigation recommendation, in any, should be strongly considered but is not binding on the Title IX Coordinator/Decision-Maker. The Title IX Coordinator or Decision-maker may invite and consider impact and/or mitigation statements from the parties if and when determining appropriate sanction(s), if any.

## **8. Additional Details of the Investigation Process**

### **A. Witness Responsibilities**

Witnesses (as distinguished from the parties) who Defiance College faculty or staff are required to cooperate with and participate in the College's investigation and Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Resolution Process constitutes a violation of Policy and may be subject to discipline.

### **B. Remote Processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) and/or Decision-maker determine that timeliness, efficiency or other causes dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. When remote technologies are used, the College makes reasonable efforts to ensure privacy, and ensures that any technology does not work to the detriment of any party or subject them to unfairness.

### **C. Recording**

No unauthorized audio or video recording of any kind is permitted during the Resolution Process including investigation interviews. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

### **D. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation in (E) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **E. Prior Sexual history/patterns**

Unless the Title IX Coordinator/Decision-Maker determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violations, unless they evidence a pattern; (2) the irrelevant sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) irrelevant character evidence.

### **F. Previous Allegations/Violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator/Decision-Maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s), if the Defiance College uses a progressive discipline system.

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be included. If not, it will be excluded.

#### **G. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator [in consultation with other administrators as appropriate] determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three (2-3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are 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 Defiance College records; or emailed to the parties' Defiance College-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which the College is permitted to share pursuant to state or federal law, and the rationale supporting the findings to the extent the College is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in Section 11..

#### **9. Sanctions**

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violations
- An individual'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 Title IX Coordinator/Decision-Maker

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

## A. Student Sanctions

The following are the sanctions that may be imposed upon students or student organizations singly or in combination:

- **Warning:** An official written notice that the student has violated College policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the College.
- **Restitution:** Compensation for damage caused to the College or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
- **Fines:** Reasonable fines may be imposed. Fines are specified to include: \$100 for intentionally or negligently activating a fire alarm.
- **Community/College Service Requirements:** For a student or organization to complete a specific supervised Community/College service.
- **Loss of Privileges:** The student will be denied specified privileges for a designated period of time.
- **Confiscation of Prohibited Property:** Items whose presence is in violation of College policy will be confiscated and will become the property of the College. Prohibited items may be returned to the owner at the discretion of the Dean of Students (or designee).
- **Behavioral Requirement:** This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc.
- **Educational Program Requirement:** to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Audience may be restricted.
- **Restriction of Visitation Privileges:** May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
- **College Housing Probation:** Official notice that, should further violations of Residence Life or College policies occur during a specified probationary period, the student may immediately be removed from College/housing. Regular probationary meetings may also be imposed.
- **College Housing Reassignment:** Reassignment to another College housing facility. Residential Life personnel will decide on the reassignment details.
- **College Housing Suspension:** Removal from College housing for a specified period of time after which the student is eligible to return. Conditions for re-admission to College housing may be specified. Under this sanction, a student is required to vacate College housing within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Residence Life. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for College housing, the student must gain permission from the Director of Residence Life (or designee). This sanction may include restrictions on visitation to specified buildings or all Defiance housing during the suspension.
- **College Housing Expulsion:** The student's privilege to live in, or visit, any College housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
- **College Probation:** The student is put on official notice that, should further violations of College policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.

- **Eligibility Restriction:** The student is deemed “not in good standing” with the College for a specified period of time. Specific limitations or exceptions may be granted by the Dean of Students and terms of this conduct sanction may include, but are not limited to, the following:
- **Ineligibility to hold any office** in any student organization recognized by the College or hold an elected or appointed office at the College; or
- **Ineligibility to represent the College** to anyone outside the College community in any way including: participating in the study abroad program, attending conferences, or representing the College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
- **College Suspension:** Separation from the College for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Dean of Students. During the suspension period, the student is banned from property, functions, events and activities without prior written approval from the Dean of Students. This sanction may be enforced with a trespass action as necessary.
- **College Expulsion:** Permanent separation from the College. The student is banned from property and the student’s presence at any College-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary.
- **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 a complaint 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 awarded from the College for fraud, misrepresentation, 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.
- **Other Sanctions:** Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with the approval of the Dean of Students or designee.

The following sanctions may be imposed upon groups or organizations found to have violated the Code of Student Conduct:

- 1) One or more of the sanctions listed above and/or
- 2) Deactivation, de-recognition, loss of all privileges (including status as a College registered group/organization), for a specified period of time.

## **B. Student Organization Sanctions**

The following are the common sanctions that may be imposed upon student 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.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the 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 and event privileges, denial of College funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student

organization may not conduct any formal or informal business or participate in College-related activities, whether they occur on or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.

- **Expulsion:** Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- **Loss of Privileges:** Restricted from accessing specific College privileges 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.

### **C. Employee Sanctions/Responsive/Corrective Actions**

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

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Delay of Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension with Pay
- Suspension without Pay
- Termination
- **Other Actions:** In addition to or in place of the above sanctions/responsive actions, the Recipient may assign any other responsive actions as deemed appropriate.

## **10. Withdrawal or Resignation While Charges are Pending**

### **A. Students**

The College does not permit a student to withdraw if that student has an allegation pending for violation of the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy. The College may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the Resolution Process to be completed.

### **B. Employees**

Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any Defiance College responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status and whether the employee is eligible for rehire.

## 11. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within 3 business days of the delivery of the written finding of the Title IX Coordinator or Decision-maker.

An Appeal Decision-Maker chosen from the Pool will be designated by the Title IX Coordinator from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.
- 3) The sanctions imposed fall outside the range of sanctions the Defiance College has designated for the violations and the cumulative disciplinary record of the Respondent.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with all other parties or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. Another party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 3 business days. These responses or appeal requests will be shared with each party. The Appeal Decision Maker will review the appeal request(s) within 5 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Chair dismisses the appeal.

When the Appeal Chair finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Chair/Panel 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 compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Chair/Panel to substitute their judgment for that of the original Investigator(s) or Title IX Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Chair/Panel.
- Sanctions imposed as the result of the Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within 5 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.

- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Title IX Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new Decision-Maker.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's 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.

## **12. Long-Term Remedies/Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its 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 community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the Defiance College to the Respondent.

## **13. Failure to Complete Sanctions/Comply with Interim and Long-Term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

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) and responsive/corrective action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

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



#### **14. Recordkeeping**

In implementing this Policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator in the Title IX Complaint database indefinitely, or as required by state or federal law or institutional policy.

#### **15. Statement of the Rights of the Parties (see Appendix C)**

#### **16. Disability Accommodation in the Resolution Process**

Defiance College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's Resolution Process. Anyone needing such accommodations or support should contact the Accessibility Services Coordinator or Director of Human Resources, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **17. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The Defiance College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the Defiance College website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

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

#### **APPENDIX G: TITLE IX POLICY**

Defiance College adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. The College does not discriminate in its admissions practices except as permitted by law, in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, Recipient is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities

do not discriminate on the basis of sex/gender. Sex includes sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status.

Defiance also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by Recipient policy.

Any member of the institutional community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the Recipient community on the basis of sex is in violation of the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy.

Any person may report sex discrimination (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by [indicate method].

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please visit [link] or contact the Title IX Coordinator.

Individuals who believe they have experienced sex discrimination, harassment, and/or retaliation in violation of Recipient policy should contact the following:

**Title IX Coordinator:**

**Lisa Marsalek, Vice President for Student Affairs and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, and/or the [appropriate state agency].

**Inquiries may be made externally to:**

Office for Civil Rights (OCR), National Headquarters

U.S. Department of Education

Lyndon Baines Johnson Dept. of Education Building

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

**For complaints involving and employee-in-employee: Equal Employment Opportunity Commission (EEOC):**

Patrick V. McNamara Building  
477 Michigan Avenue  
Room 865  
Detroit, MI 48226  
United States  
1-800-669-4000

Within any Resolution Process related to this Policy, Recipient provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

## **APPENDIX H: RECORD MAINTENANCE AND ACCESS MODEL POLICY**

### Policy Scope:

This policy covers records maintained in any medium that are created pursuant to the College's Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy and/or the regular business of the College's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable state and/or federal law, including the Title IX regulations, FERPA, and/or the Clery Act/VAWA § 304. The Title IX Office controls the dissemination and sharing of any records under its control.

### Types of Records Covered Under this Policy:

Records Pertaining to the Resolution Process. These records include, but are not limited to:

- Documentation of notice to the institution including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation
- Documentation related to the Resolution Process
- The final investigation report
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal resolution records
- Notices of Outcome
- Records documenting that the College's response was not deliberately indifferent
- Any other records typically maintained by the College as part of the case file

Specific examples of records pertaining to the Resolution Process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to

the processing of an investigation; correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove the Respondent; correspondence with the parties; medical, mental health, medical, and forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the Resolution Process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

**Drafts and Working Files:** Preliminary drafts and “working files” are not considered records that must be maintained by the College, and these are typically destroyed during the course of an investigation or at its conclusion. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

**Attorney Work-Product:** Communications from the Title IX Office or its designees with the College’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

#### Record Storage:

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in database, digital and/or paper format. The complete file must be transferred to the Title IX Office within fourteen (14) business days of resolution of the complaint (including any appeal), if the file is not already maintained within the Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the parties. Parallel records should be maintained in the Office of Student Conduct and/or Human Resources, respectively and should be maintained in accordance with the security protocols of those offices. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Title IX Office [and in a separate aggregate annual Clery Act composite file, as well].

#### Record Retention:

All records created and maintained pursuant to the Policy must be retained indefinitely by the Title IX Office in database, digital, and/or paper form] unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

#### Record Access:

Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion or via permission levels within the database. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant College policies and procedures.

Student parties may request access to their case file. The College will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of the recipient in the process (Complainant, Respondent, Hearing Decision-maker; Complainant's Advisor, etc.).

#### Record Security:

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the Title IX Office, designated secure storage area. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the case file.

This Policy and procedure was implemented on August 14, 2020 and updated on July 15, 2022 Revised August 2023, and December, 2023. .

**BASED ON THE ATIXA 2023 ONE POLICY, TWO PROCEDURES MODEL.  
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