

Title IX Grievance Policy for Sex-Based Harassment Complaints Involving a Student

I. Effective Date and Changes to Procedure Based on Court Rulings and Legal challenges or Changes in Law or Regulation Policy

This policy incorporates Title IX 2024 regulations and NY Education Law Article 129-B, to be enforced by Wagner College after August 1, 2024. Any incidents reported under this policy and procedure that occurred on or before July 31, 2024 will be processed through the institution's 2020 Title IX Grievance Policy or other policies and procedures in place at the time of the alleged incident.¹

II. Scope of Policy

Wagner College has two processes for addressing sexual misconduct. This policy is primarily aimed at addressing complaints of *sexual harassment involving a student as a party*, as defined below. The College's policy and grievance procedures for addressing all other forms of unlawful discrimination and harassment can be found here: [Wagner College's Statement on Sex Discrimination and Sexual Violence](#).

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

III. Jurisdiction of Policy

The College's Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;²

¹ Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Procedure, the Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy. Wagner College will update this Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Procedure, if applicable.

² Wagner College has an obligation to address a sex-based Hostile Environment under its Education Program or Activity, even when some conduct alleged to be contributing to the Hostile Environment occurred outside the College's Education Program or Activity, or outside of the United States. This policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to Wagner College's Education Program or Activities. The College's Title IX Coordinator will work with all Complaints to assess such Complaints that may fall under

- The conduct alleged occurred in Wagner College’s Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Policy;
- One of the parties was an enrolled student at Wagner College at the time of the alleged conduct.

For disciplinary action to be issued under this Policy, the Respondent must be a Wagner College student or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the Wagner College community, the Title IX Coordinator or designee will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions. Wagner College can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving Wagner College through third-party contracts are subject to the policies and procedures of their employers, but may be subject to removal at Wagner’s discretion in good cause exists to believe they have violated College policy.

When a party is participating in a dual enrollment and/or early college program, Wagner College will coordinate with the party’s home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, Wagner College can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution’s policies.

If all elements of jurisdiction are met, the College will investigate the allegations according to this Grievance Procedure as appropriate, unless informal resolution is pursued or unless there are grounds for dismissal of the Complaint.

Online Harassment and Misconduct

Wagner College’s 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 Wagner College’s education program and activities, or when they involve the use of Wagner College’s networks, technology or equipment.

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

Nothing in the Policy is intended to infringe up or limit a person’s rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated

these criteria, and direct to appropriate College Policies and Procedures that may apply if this Grievance Procedure does not. The College will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Procedure as outlined in the Dismissals section.

stalking, harassment, occurring completely outside of Wagner College's control (e.g. not on Wagner College's networks, websites, or between Wagner College email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Wagner College when such speech is made in an employee's official or work-related capacity or infringes upon or harms the rights of others to participate in Wagner College educational programs or services.

IV. Non-Discrimination in Application

The requirements and protections of this Grievance Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by applicable federal, state or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a Complaint about the institution's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

V. Students' Bill of Rights

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of Domestic Violence, Dating Violence, Stalking, and Sexual Assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the Reporting Individual is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from Retaliation by the institution, any Student, the Accused and/or the Respondent, and/or their friends, family, and acquaintances within the jurisdiction of the institution;

9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a Reporting Individual or Complainant, Accused, or Respondent throughout the judicial or conduct process including all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct processes of the institution.

VI. Definitions

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by the College.

2. **Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When Consent is withdrawn or can no longer be given, sexual activity must stop. "Consent" and "affirmative consent" may be used interchangeably under this Grievance Policy.

3. **Complainant** means:

(i) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in the College's Education Program or Activity;

or

(ii) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Grievance Policy and who was participating or attempting to participate in the College's Education Program or Activity at the time of the alleged Sex-Based Harassment.

4. **Complaint** means an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged Sex-Based Harassment at the institution.
5. **Confidential Employee** means:
 - (i) an employee of the College whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
 - (ii) an employee of the College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
6. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated the College's prohibition of Sex-Based Harassment.
7. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by the College that receives Federal financial assistance.
8. **Party** means Complainant or Respondent.
9. **Peer Retaliation** means Retaliation by a Student against another Student.
10. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Policy. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
11. **Remedies** means measures provided, as appropriate, to a Complainant or any other person the College identifies as having had their equal access to the College's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to the College's Education Program or Activity after the College determines that Sex-Based Harassment occurred.
12. **Respondent** means a person who is alleged to have violated the College's prohibition on Sex-Based Harassment.

13. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by the College, a Student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Policy, including an informal resolution process.

14. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

- (i) *Quid pro quo harassment*. An employee, agent or other person authorized by the College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- (ii) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access the College's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within the College's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in the College's Education Program or Activity;
- (iii) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;
- (iv) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

- (v) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State; or
 - (vi) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.
15. ***Student*** means a person who has gained Admission.
16. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to the College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or the College's educational environment; or (2) provide support during the College's Grievance Procedure for Sex-Based Harassment or during the informal resolution process.

VII. Disability Accommodations

This policy does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator or designee at any point before or during the Title IX Grievance process that do not fundamentally alter the Policy. The Title IX Coordinator or designee will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

If the Complainant or Respondent discloses a disability, the Title IX Coordinator or designee may consult, as appropriate, with the Wagner College Accessibility Services to provide support to students with disabilities to determine how to comply with applicable laws including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance process.

VIII. Policy for Alcohol and/or Drug Amnesty

The health and safety of every student at Wagner College is of utmost importance. Wagner College recognizes that students who have been drinking and/or using drugs (whether such use is

voluntary or involuntary) at the time that violence including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Wagner College strongly encourages students to report domestic violence, dating violence, stalking, and sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Wagner College's officials or law enforcement will not be subject to Wagner College's student code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

IX. Basic Requirements of the Grievance Procedure

Wagner College is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by Wagner College as a Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complaint or Respondent;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that include the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this Procedure, including both inculpatory and exculpatory evidence, and provide that credibility determination must not be based on a person's status as a Complainant, Respondent, or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how Wagner College will determine which policies and procedures apply if not all such complaints are handled under this institutional Grievance Procedure.

Per New York State Law, Wagner College is also required to additionally ensure that Complainants are advised of their right to:

- Notify Wagner College Public Safety, local law enforcement, and/or state police;
- Have emergency access to a Title IX Coordinator, designee or other appropriate official trained in interviewing victims of sexual assault who shall be available upon first instance of disclosure by a Complainant to provide information regarding options to proceed, and,

where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;

- Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
- Disclose, if the accused is an employee of Wagner College, the incident to Wagner College's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point, such referral shall be handled according to the appropriate policies and procedures related to employee complaints;
- Receive assistance from appropriate Wagner College representatives in initiating legal proceedings in family court or civil court; and
- Withdraw a complaint or involvement from Wagner College's Grievance Procedure at any time.

X. Reporting Sex-Based Harassments to the Institution

Privacy vs. Confidentiality

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Wagner College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify

the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Wagner College will limit the disclosure as much as practicable, even if the Title IX Coordinator or designee determines that the request for confidentiality cannot be honored.

Places to Report

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator and Deputy Coordinators at Wagner College

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The following officials at Wagner College will provide **privacy, but not confidentiality**, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s):
- Officials with Authority to institute corrective measures under Title IX;
- All other employees at Wagner College (including Resident Assistants) that are not designated as confidential resources.

The following officials at Wagner College may provide **confidentiality**:

- Center for Health and Wellness Licensed Practitioners
- There are other confidential options available for crisis intervention, resources and referrals, but these are not reporting mechanisms to the institution, meaning that disclosure on a call to one of these hotlines does not provide any information to Wagner College.

Complainants are encouraged to additionally contact a campus confidential or private resource so that Wagner College can take appropriate action in these cases. Some resources for confidential disclosure **NOT** to the institution are:

- The New York State Office for the Prevention of Domestic Violence hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options that can be found and are presented in several languages can also be found here: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
- Legal Momentum: <https://www.legalmomentum.org/>;
- NYSCASA: <https://nyscasa.org/responding>;
- NYSCADV: <http://www.nyscadv.org/>;
- Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>;
- GLBTQ Domestic Violence Project: <http://glbtqdv.org/>;
- RAINN: <https://www.rainn.org/get-help>; and
- Safe Horizons: <http://www.safehorizon.org/>.

At the First Instance of Disclosure of a Report

Wagner College shall ensure that, at a minimum, at the first instance of disclosure by a Complainant to a Wagner College representative, the following information shall be presented to the Complainant: “You have the right to make a report to College police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from Retaliation for reporting an incident; and to receive assistance and resources from your institution.”

XI. Supportive and Interim Measures

Providing Supportive Measures

Complainants who report allegations of Sex-Based Harassment have the right to receive supportive measures from Wagner College regardless of whether they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at Wagner College.

As appropriate, supportive measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment
- Assistance by Wagner College’s Department of Public Safety, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Wagner College’s educational environment, or to provide support during Wagner College’s Sex-Based Harassment grievance procedures under this policy or during informal resolution under this procedure.

Wagner College may modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of the Informal Resolution process or may continue them beyond that point within Wagner College's discretion.

Wagner College will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Wagner College's Education Program or Activity, or there is an exception that applies, such as:

- Wagner College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Wagner College's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

Note on Orders of Protection and their equivalent: Wagner College must provide a copy of the order of protection or equivalent when it is received by Wagner College, and Parties shall have the opportunity to meet or speak with the Title IX Coordinator or designee, who can explain the order and answer questions about it, including information from the order about the Accused's/Respondent's responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from Wagner College Department of Public Safety in effecting an arrest when an individual violates an order of protection or, if Wagner College Department of Public Safety does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

Process for Review of Supportive Measures

Wagner College provides for a Complainant or Respondent to seek modification or reversal of Wagner College's decision to provide, deny, modify, or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

- Whether a supportive measure is reasonably burdensome;

- Whether a supportive measure is reasonably available;
- Whether a supportive measure is being imposed for punitive or disciplinary reasons;
- Whether the supportive measure is being imposed without fee or charge; and
- Whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

This review will be conducted by an impartial employee of Wagner College, who did not make the challenged decision on the original supportive measure request. The impartial employee of Wagner College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

Emergency Removal

Wagner College retains the authority to remove a Respondent from all or part of Wagner College's Educational Program or Activity on an emergency basis, where Wagner College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health and safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Wagner College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Respondents may do so by submitting the challenge to the Title IX Coordinator, who will ensure that it is properly considered by a neutral decision-maker.

The decision-maker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

Administrative Leave

Wagner College retains the authority to place a non-student employee Respondent on administrative leave or suspension during the Grievance Procedure, consistent with the relevant employee handbook and any applicable collective bargaining agreements.

Note on student employees: when a Complainant or Respondent is both a student and an employee of Wagner College, Wagner College must make a fact-specific inquiry to determine whether this procedure applies to that student employee. Wagner College will consider if the Complainant or Respondent's primary relationship with Wagner College is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

XII. The Title IX Grievance Procedure for Sex-Based Harassment Involving a Student as a Party

A. Filing a Complaint

Who can make a Complaint?

- A Complainant (as defined in Section VI(3) of this policy); or
- The Title IX Coordinator.

Note on Title IX Coordinator initiated Complaints: In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
- Whether the College could end the alleged Sex-Based Harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of these procedures.

Is there a particular format that the Complaint needs to be in?

As defined in VI(4) of these procedures, a Complaint can be an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged Sex-Based Harassment at the institution.

Who can I report a Complaint to?

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

The College requires that any employee who is not a Confidential Employee must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

All other employees at the College who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex-discrimination, including Sex-Based Harassment.

Note: If an employee has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

What is the timeframe for the College to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure within five College business days after the Complaint is made, and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?

Yes. The College has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

B. Multi-Party Situations and Consolidation of Complaints

The College may consolidate Complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

The College can consider factors when making this fact-specific determination, which include, but are not limited to:

- The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

C. Dismissal of a Complaint

Grounds for Dismissal

The College may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- The College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the College's education program or activity and is not employed by the College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Policy, and the College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Policy even if proven; or
- The College determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. **Note:** the College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

If the College dismisses a Complaint, the College is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the College must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under *Appeal of Dismissals*.

Appeals of Dismissals

The College must notify the Complainant that a dismissal may be appealed in accordance with Section XIII of this Procedure.

D. Allegations Potentially Falling Under Two Policies:

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, this Grievance Process will be applied in the investigation and adjudication of all of the allegations.

If a particular situation invokes more than one College policy or process, the College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

E. Notice of Allegations

Upon initiating the College's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. The College will provide the Notice of Allegations within ten College business days after receiving a Complaint if there are no extenuating circumstances.

What does the Notice of Allegations Include?

The written Notice of Allegations must include:

- The College's Grievance Procedure and the College's Informal Resolution process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedure, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the College;
- A statement that the Parties are entitled to an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of the College's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;

- The College’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during the College’s Grievance Procedure; and
- If, in the course of an investigation, the College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, the College is required to provide written notice of any additional allegations to the Parties whose identities are known.

What if the College decides to investigate additional allegations of Sex-Based Harassment?

If, in the course of an investigation, the College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Policy, the College shall provide notice of the additional allegations to the Parties whose identities are known.

What if I have safety concerns about a Notice of Allegations being issued to a Respondent?

To the extent that the College has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, the College through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

F. Advisor of Choice and Participation of Advisor of Choice

A Party’s advisor of choice may accompany the Party to any meeting or proceeding, and the College will not limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding, unless such advisor does not follow the College’s established rules of decorum and rules around participation.

G. Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

The College, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The College cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. The College will provide an equal opportunity for the Parties to present witnesses, and other inculpatory or exculpatory evidence, as described below.

Notice of participation

The College will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

Advisors of Choice and Participation of Advisors of Choice

The College will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The College will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding, unless there is a violation of reasonable expectations of etiquette.

Access to and Review of the Investigative Report

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with an equal opportunity to access and review an accurate description of the Relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying Relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the investigative report.

The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to the College's Student Code of Conduct and other College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Review and Access to Relevant and Not Otherwise Impermissible Evidence

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence.

The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to the Student Code of Conduct other College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Relevant Evidence

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by the College to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

- Evidence that is protected under a privileged as recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the College obtains that Party's or witness's voluntary, written Consent for use in the College's Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to

prove Consent to the alleged Sex-Based Harassment. Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

Timeframe

An investigation will generally take no more than thirty (30) College business days to complete.

The College allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

H. Decision-making Process

General Rules for Live Hearings

The College will not issue a finding or disciplinary sanction arising from an allegation of Sex-Based Harassment involving a student as a party without holding a live hearing, unless otherwise resolved through an informal resolution process as outlined in this Grievance Procedure.

The live hearing may be conducted with the Parties physically present in the same geographic location. The College has the discretion to conduct the live hearing with the Parties physically present in separate locations, with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking. A Party may also request this option prior to the hearing.

The College shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

Participants in the Live Hearing

All participants must follow the College's reasonable expectations for professional behavior and conduct. Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and The College may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. The College will not threaten, coerce, intimidate or discriminate against any Party in an attempt to secure the Party's participation. The decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing, or a refusal to answer questions.

The Decisionmaker

The hearing body will consist of a three person hearing board panel (trained faculty and/or staff) and decision-maker, the Dean of Campus Life or designee. No member of the Hearing Board will have served as the Title IX Coordinator, Title IX investigator or advisor to any Party in the case, nor may any member of the Hearing Board serve on the appeals body in the case. No member of the Hearing Board will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case. The Hearing Board will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of Choice

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party. An advisor of choice is not prohibited from being a witness in the hearing.

Witnesses

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation.

Hearing Procedures

For all live hearings conducted, the Hearing Board will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

Questioning Parties and Witnesses

During a live hearing, each Party is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the Hearing Board. No questioning to another Party or witness will be conducted by a Party personally.

Procedures for Decision-Makers Evaluation of Questions and Limitation on Questions

The Hearing Board will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If the Hearing Board determines that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The Hearing Board must give a Party an opportunity to clarify or revise a question that the Hearing Board has determined is unclear or harassing and, if

the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question will be asked.

Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions

A Hearing Board may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The Hearing Board will not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

Continuances or Granting Extensions

The College may determine that multiple sessions or a continuance (a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, The College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing. If a Party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the live hearing.

The Hearing Board will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The Party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Hearing Board answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

I. Determination Regarding Responsibility

Standard of Proof

The College uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedure occurred.

General Considerations for Evaluating Evidence and Testimony

The decisionmaker (Hearing Board) is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the

applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that Sex-Based Harassment occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

decision-makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Communication of the Determination in Writing

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that the College used to evaluate the allegations;
- The decision-maker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions the College will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by the College to the Complainant, and, to the extent appropriate, other Students identified by the College to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- The College's procedures for Complainant and Respondent to appeal.

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College within ten (10) College business days of the completion of the hearing.

Finality of Determination

The determination regarding responsibility becomes final either on the date that the College provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

J. Appeals

Each Party may appeal a determination regarding responsibility in accordance with Section XIII.

K. Informal Resolution

Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek the College's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter the College's informal resolution process at any time through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and the College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within the College's Education Program or Activity.

Notice Prior to Entry Into Informal Resolution Process

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;

- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume the College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming the College's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information the College will maintain and whether and how the College could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, the status of the parties (i.e., student or employee), whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, the College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decision-maker(s) in the College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- The College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;

- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and the College's response to sex discrimination;
- The rules and practices associated with the College's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of the College's education programs or activities or attendance at specific events, including restrictions the College could have imposed as Remedies or Disciplinary Sanctions had the College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

Breach of Informal Resolution Agreements

If a Party breaches the resolution or if the College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, the College may void the agreement and initiate or resume the Grievance Procedure. The College may also bring conduct or disciplinary charges against the party found in violation of the agreement.

Confidentiality:

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

Informal Resolution Options

The College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point

during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the College will determine the Respondent's sanction and other Remedies, as appropriate and consistent with College policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described above.

Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a Student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the Consent of both Parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within ten days after the Title IX Coordinator receives Consent to mediate from both Parties, and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Coordinator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Dean of Students to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Title IX Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

XIII. Appeals of Dismissals and Determinations

Parties may appeal both the dismissal of a Complaint and the determination of whether discrimination occurred under the following conditions:

Appeal Submission Process

A Party must submit their written appeal within five (5) College business days of being notified of the decision, indicating the specific grounds for the appeal.

Appeal Process

Upon receipt of an appeal, the College will:

- Notify both Parties of the appeal, including the details of the allegations if not previously provided to the Respondent.
- Implement the appeal procedures equally for both Parties.
- Ensure that the decision-maker for the appeal did not participate in the investigation, dismissal, or original determination of the Complaint and is free of conflict of interest and bias.
- Ensure that the decision-maker for the appeal has been trained in accordance with Title IX regulations.
- Provide both Parties with a reasonable and equal opportunity to submit a statement in support of, or challenging, the outcome.
- Notify the Parties of the result of the appeal simultaneously in writing, including the rationale for the decision.

Grounds for Appeal

The limited grounds for appeal are as follows:

- **Procedural Irregularity:** A procedural irregularity that affected the outcome of the matter, such as a failure to follow the College's policy that had a material impact on the decision.
- **New Evidence:** New evidence that was not reasonably available at the time of the determination or dismissal and that could affect the outcome of the matter.
- **Bias or Conflict of Interest:** 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 individual Complainant or Respondent, which affected the outcome of the matter.

Appeal Decision-Making

- Appeals will be decided by an Appeals Panel appointed by the Title IX Coordinator, which will be free of conflict of interest and bias and will not serve as the investigator, Title IX Coordinator, or initial decision-maker in the same matter.
- The outcome of the appeal will be provided in writing simultaneously to both Parties and will include the rationale for the decision. The determination of the Appeals Panel is final.

Effect of Appeal on Sanctions and Supportive Measures

- The submission of an appeal stays (pauses) any sanctions during the pendency of the appeal.

- Supportive measures and remote learning opportunities remain available to both Parties while the appeal is being deliberated.

Additional Provisions for Appeals from Dismissals

- When a Complaint is dismissed, the College will offer supportive measures to the Complainant and, if applicable, to the Respondent. The College will also take other prompt and effective steps as appropriate, through the Title IX Coordinator, to prevent discrimination from continuing or recurring within the College's education programs or activities.
- If the dismissal occurs after the Respondent has been notified of the allegations, the College will notify the Respondent that the dismissal may be appealed on the grounds outlined above.

XIV. Transcript Notations

For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall, as applicable, include the following notation:

- Suspended after a finding of responsibility for a code of conduct violation;
- Expelled after a finding of responsibility for a code of conduct violation; or
- Withdrew with conduct charges pending.

Transcript notations for suspensions may be removed at the discretion of the College, but no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion may not be removed.

XV. Retaliation

The College prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, the College will initiate its grievance procedure or, as appropriate, an informal resolution process.

Complaints alleging Retaliation may be filed according to the [Nondiscrimination Policy](#) and [Grievance Procedures](#).