

Sexual Harassment, Sexual Misconduct,
Domestic Violence, Dating Violence and Stalking
Policy & Procedures



LANDMARK
COLLEGE

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Notice of Nondiscrimination on the Basis of Sex

Landmark College does not discriminate on the basis of sex in its education programs and activities, and Title IX of the Education Amendments Act of 1972, as amended (“Title IX”), as well as applicable state law, requires that it not discriminate in such a manner. Prohibited sex discrimination includes sexual harassment and other behaviors as outlined in this policy. In addition to violating College policy, sexual harassment may also be unlawful. Inquiries concerning the application of Title IX may be referred to the College’s Title IX coordinator (see below) or to the United States Department of Education Office for Civil Rights. The OCR Region I office’s contact information is: Office for Civil Rights, Boston Office, U.S. Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3921, Telephone: 617-289-0111, Facsimile: (617) 289-0150, Email: OCR.Boston@ed.gov).

Scope of Policy

This policy and the procedures outlined below apply exclusively to reported conduct that falls within the scope of the policy, and supersede any other previously-published College policies on issues related to sexual harassment, sexual misconduct, domestic violence, dating violence or stalking. Further, to the extent that this policy and its procedures provide for the handling of allegations that fall within the definition of Title IX Sexual Harassment, such allegations will be handled exclusively as provided in this policy and its procedures, rather than any policies or handbook procedures that would otherwise apply to college students, faculty or staff.

This Policy will be used by the College to address incidents alleged to have taken place on or after August 14, 2020. Any incidents alleged to have taken place prior to August 14, 2020 will be addressed through the policies and procedures outlined in the Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence and Stalking Policy published in the 2019-2020 Student Handbook and not through the policies and procedures outlined in this policy. This delineation of applicable policies and procedures will apply regardless of when the alleged incident is reported.

In Title IX Sexual Harassment cases and Non-Title IX Misconduct cases as defined below that involve allegations that a student engaged in Prohibited Conduct, the policy language, and procedures for both categories of cases outlined below will apply.

In Title IX Sexual Harassment cases as defined below that involve allegations that a College employee engaged in Title IX Sexual Harassment, the policy language and procedures for Title IX Sexual Harassment cases outlined below will apply, in accordance with applicable law.

Allegations that a College employee engaged in discrimination or harassment that do not fall within the definition of Title IX Sexual Harassment will be addressed through other employment-related policies, practices, handbooks and/or collective bargaining agreements, but will not be addressed through the policy language or procedures outlined in this policy.

To understand how to file a complaint of sexual harassment/misconduct, domestic violence, dating violence and/or stalking at Landmark College, please see the section below on Complaint Procedures.

Title IX Coordinator

The Vice President for Student Affairs is the designated Title IX Coordinator for Landmark College and is authorized to and responsible for coordinating the College’s efforts to comply with and carry out its responsibilities under Title IX.

The contact information for the Landmark College Title IX Coordinator is:

Michael Luciani, Vice President for Student Affairs
Landmark College
19 River Rd South
Putney, Vermont 05346
(802) 387-6713 mluciani@landmark.edu

The Title IX Coordinator is available to meet with students and employees as needed. References throughout this policy to the Title IX Coordinator should be read as also including designees of the Title IX Coordinator.

General Definitions

The definitions of sexual assault, domestic violence, dating violence and stalking used in this policy are consistent with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended effective 2014 and Title IX and May 2020 Title IX regulations.

In its primary prevention and awareness programs for incoming students and new employees, and its ongoing prevention and awareness programs for students and employees, Landmark College includes the definitions of sexual assault, the definition of consent in reference to sexual activity, and the definitions of domestic violence, dating violence and stalking that are used by Vermont criminal laws.

However, the College utilizes its own definitions of these prohibited behaviors for purposes of this policy that are consistent with the Clery Act, as amended effective 2014 and Title IX and May 2020 Title IX regulations, and determines responsibility for violations of College policy through its own procedures and standards of proof (that is, by a preponderance of the evidence standard), not through the procedures or standards of proof employed in the criminal justice system.

Consent

For purposes of the College's Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy, **consent** is defined as follows:

- Consent is a voluntary agreement to engage in sexual activity, demonstrated by words or actions freely and actively given by each party, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct;
- Someone who is incapacitated cannot effectively consent (such as when a person is incapacitated by the use of drugs or alcohol, when a person is asleep or unconscious, or when a person has an intellectual or other disability that prevents the person from having the capacity to give consent);
- Past consent does not imply future consent;
- Silence or an absence of resistance does not imply consent;
- Consent to engage in sexual activity with one person does not imply to consent to engage in sexual activity with another;
- Consent can be withdrawn at any time; and
- Coercion, force, or threat of either, or placing the other person in fear that any person will suffer imminent bodily injury, invalidates consent.

The College will use an objective standard when determining incapacitation-related questions; that is, a respondent will be found responsible for sexual assault when the College determines that the respondent knew, or reasonably should have known based on an objective standard, that the other person was unable to effectively give or withhold consent because they were incapacitated:

1. By the consumption of drugs, alcohol, or other intoxicants; or
2. Because the other person was subject to a physical or mental incapacity such as sleep or unconsciousness.

It is the responsibility of those who initiate and/or engage in sexual activity to be clear that informed, voluntary consent is given before proceeding with further sexual activity.

It should be noted that ignorance of the policy noted above, or the intoxication of the respondent, will not (particularly given the College's objective standard) be considered an excuse for violating this policy.

Complainant

A complainant is a student or employee of the College who is reported to have experienced conduct that could constitute Prohibited Conduct as defined below. In some cases (such as, for example, cases in which a person involved in an alleged incident of Prohibited Conduct does not wish to participate in the process, but the College decides that the alleged misconduct needs to be investigated and addressed), the College may move forward with an investigation and/or related disciplinary proceeding without a designated complainant. In such cases, the College may extend the full rights of a complainant as defined in this policy to affected parties as deemed appropriate by the College and/or as permitted or required by applicable law. For ease of reference and consistency, the term "complainant" is used hereafter in this policy to refer to a person who believes that he or she has been subjected to Prohibited Conduct, or who is believed by another to have been subjected to such conduct.

Respondent

A respondent is a student, employee or covered third party (to the extent the College elects to address reports regarding a covered third party through this policy, rather than otherwise at the College's discretion) who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined in this policy. A covered third party is a person who is not a student or employee of the College, but who is someone over whom the College has some measure of control that would allow the College to take some form of action against them if it is determined that they engaged in Prohibited Conduct (e.g., a vendor or volunteer). Again, such individuals will be provided rights under this policy on to the extent the College elects to do so.

Officials with Authority

Officials with authority to institute corrective measures regarding matters involving Prohibited Conduct include the College's Title IX Coordinator, whose contact information is provided above and any designee. An Official With Authority will, upon receipt of a formal complaint of *Title IX Sexual Harassment*, take action on such a complaint in accordance with the procedures outlined below.

Retaliation

Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing

regulations or this 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 regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Misconduct). Retaliation is strictly prohibited. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitute retaliation, as do any adverse action taken against a person because they have made a good faith report of Prohibited Conduct or participated in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under this policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

The College will not engage in, and will investigate and address, reports of retaliatory conduct. Retaliation under this policy may be found whether or not the underlying complaint is ultimately found to have merit.

Any person who believes that he or she has been subjected to such retaliation should follow the complaint resolution procedures outlined for general grievances in the Student Handbook.

Prohibited Conduct

This Policy prohibits the following forms of misconduct, collectively referred to throughout the policy as “Prohibited Conduct”:

- Title IX Sexual Harassment (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence, and sex-based Stalking within the scope of Title IX); and
- Non-Title IX Misconduct (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking outside the scope of Title IX, Sexual Exploitation as defined below, and Retaliation).

Specifically, Title IX Sexual Harassment and Non-Title IX Misconduct are defined as follows for purposes of this Policy:

Title IX Sexual Harassment

Under Department of Education regulations issued in May 2020 the College is required to prohibit certain forms of sexual harassment as defined in those regulations. Title IX Sexual Harassment is Prohibited Conduct of the following types committed by or against students and/or employees in an education program or activity of the College, in the United States. Further, in order for the College to consider a Formal Complaint of such misconduct as falling within its Title IX Sexual Harassment policy and procedures, the complainant must be participating in or attempting to participate in a College program or activity at the time the complaint is filed.

Conduct takes place within the College’s “programs and activities” when that conduct occurs:

- (1) in a location, at an event, or in a circumstance where the College exercises substantial control over both the respondent and the context in which the conduct occurs; or
- (2) in any building owned or controlled by a student organization recognized by the College.

Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to have occurred in a program or activity of the College.

A complaint about conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by the College if it otherwise constitutes Prohibited Conduct within the definition of Non-Title IX Misconduct as defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

Title IX Quid Pro Quo Sexual Harassment

Quid Pro Quo Sexual Harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States by which an employee of the College conditions the provision of an aid, benefit, or service of the College on a student's or employee's participation in unwelcome sexual conduct.

Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment

Severe, Pervasive and Objectively Offensive Sexual Harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to a the College education program or activity.

Title IX Sexual Assault

As required by the May 2020 Title IX regulations, Title IX Sexual Assault incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program, and is defined as follows:

- (1) Rape
 - a. The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be complainants under this definition);
 - b. Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - c. To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- (2) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, "private body parts" includes breasts, buttocks, or genitals, whether clothed or unclothed);

- (3) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- (4) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Sexual assault can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Dating Violence

Title IX Dating Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

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

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Domestic Violence

Title IX Domestic Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes a felony or misdemeanor crime of violence committed:

- (1) By a current or former spouse or intimate partner of the victim;
- (2) By a person with whom the victim shares a child in common;
- (3) By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;
- (4) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (5) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Stalking

Title IX Stalking for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's safety or the safety of others; or
- (2) Suffer substantial emotional distress.

For purposes of this definition:

- (1) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (2) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (3) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above (i.e., the behaviors or activities would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress):

- (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome;
- (2) use of online, electronic or digital technologies, such as posting pictures or text in chat rooms or on websites, sending unwanted or unsolicited e-mail or talk requests, posting private or public messages on Internet sites, social networks, and/or school bulletin boards, installing spyware on a person's computer, or using Global Positioning Systems (GPS) or similar technology to monitor a person;
- (3) pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person;
- (4) surveillance or other types of observation, including staring and voyeurism;
- (5) trespassing;
- (6) vandalism;
- (7) non-consensual touching;
- (8) direct verbal or physical threats against a person or a person's family member, pet or personal property;
- (9) gathering information about a person from friends, family, or co-workers;
- (10) accessing private information through unauthorized means;
- (11) threats to harm self or others;
- (12) defamation and/or lying to others about the person; and
- (13) using a third party or parties to accomplish any of the above.

Behaviors or activities that fall within this definition are violations of College policy and are prohibited.

Non-Title IX Misconduct

Non-Title IX Misconduct is Prohibited Conduct that falls within the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of the College in the United States.

Reported behavior that falls within the definition of Non-Title IX Misconduct is defined here but will be addressed separately through the College's general disciplinary process located in the Student Handbook (for students) or Employee Handbook (for staff & faculty).

Non-Title IX Sexual Harassment

Non-Title IX Sexual Harassment is a form of sex discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that has the purpose or effect of substantially interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, shared living, or educational environment, on the basis of sex. The College will determine whether conduct falls within this definition by using both an objective standard (that is, would a reasonable person experience the conduct as intimidating, hostile or offensive as defined here) and a subjective standard (that is, did the person actually perceive the conduct as intimidating, hostile or offensive as defined here).

Examples of sexual harassment include, but are not limited to the following, when such acts or behavior come within the above definition:

- touching or grabbing any part of a person's body (in a manner that is sexual or offensive on the basis of sex but that does not constitute "fondling", which is a form of Title IX Sexual Assault or Non-Title IX Sexual Assault as defined above and below) after that person has indicated, or it is known or should be known, that such physical contact is unwelcome;
- continuing to ask a person to socialize on or off-campus when that person has indicated that they are not interested;
- displaying or transmitting sexually suggestive pictures, objects, cartoons, messages, web links or posters if it is known or should be known that the behavior is unwelcome;
- continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;
- communicating derogatory or provoking remarks about or relating to a person's sex, gender identity or sexual orientation;
- directing harassing acts or behavior against a person on the basis of their sex, gender identity or sexual orientation; or
- off-campus conduct which falls within the above definition and affects a person's on-campus educational, shared living, or work environment.

Sexual Harassment that meets the definition of Title IX Sexual Harassment outlined above will be addressed under the procedures for Title IX Sexual Harassment provided in this policy.

Landmark College recognizes that the protection of free and open speech and the open exchange of ideas is important to any academic community. This recognition is therefore an important element in the objective "reasonable person" standard used in judging whether sexual harassment has occurred. This policy is meant neither to proscribe nor to inhibit discussion, in or out of the classroom, of complex, controversial or sensitive matters, when in the judgment of a reasonable person they arise appropriately and with respect for the dignity of others.

Landmark College also recognizes, however, that verbal conduct can be used specifically to intimidate or coerce and to inhibit genuine discourse, free inquiry, and learning. Such abuses are unacceptable. If someone believes that another's speech or writing is offensive, wrong, or hurtful, they are encouraged to express that judgment in the exercise of their own free speech or to seek redress under this policy or other College policies as appropriate.

Non-Title IX Sexual Assault

Sexual Assault (i.e., rape, fondling, incest or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the College in the United States, and attempts to commit such misconduct.

Non-Title IX Domestic Violence

Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the College in the United States.

Non-Title IX Dating Violence

Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the College in the United States.

Non-Title IX Stalking

Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the College in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the complainant on the basis of sex.

Non-Title IX Sexual Exploitation

Non-Title IX Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that other person without that other person's consent, and attempted sexual exploitation. Examples of sexually exploitative behavior include, but are not limited to:

- (1) video recording or photographing of sexual acts or nudity of another member of the College community without the consent of a person involved;
- (2) transmitting such video recordings or photographs without the consent of the person involved;
- (3) viewing or allowing or aiding others to view another person's sexual activity, intimate body parts, or nudity without the person's consent; and (4) sexual exhibitionism or exposure of one's genitalia in the presence of others without their consent.

Coordination with Other Policies

Where alleged conduct by a student respondent that is reported in connection with a reported violation of this policy also involves potential violations of the Landmark College Student Code of Conduct that would not constitute sexual harassment, sexual misconduct, domestic violence, dating violence or stalking covered by this policy, the College may, at its discretion, choose to investigate and resolve such other potential Student Code of Conduct violations through an investigation under the procedures set forth in this policy, rather than the procedures set forth in the Student Code of Conduct.

Where alleged conduct by an employee or covered third party respondent that is reported in connection with a reported violation of this policy also potentially involves violations of Landmark College's expectations for employee or covered third party behavior, the College may address such reported violations of other behavioral expectations within or outside the procedures provided below, as determined at the College's discretion.

Separate Handling of Other Policy Violations by Reporting Students

The College's primary goals when responding to complaints of Prohibited Conduct such as sexual harassment/misconduct, domestic violence, dating violence or stalking matters involving students is to promote safety, and to address Prohibited Conduct and prevent it from recurring. An individual should not hesitate to report Prohibited Conduct due to a concern that the investigation process may indicate that he or she was under the influence of alcohol or drugs at the time of the incident. Violations of other College policies will be handled separately from sexual misconduct complaints, and the relatively minor sanctions that may result from a violation of other College policies under the circumstances should not dissuade an individual from reporting relatively serious incidents of Prohibited Conduct. The use of alcohol or drugs never makes the complainant at fault for sexual harassment, sexual misconduct, domestic violence, dating violence or stalking.

Confidentiality

The College understands that individuals who have concerns about sexual harassment/misconduct, domestic violence, dating violence, or stalking may look for assurances of confidentiality.

May 2020 Title IX regulations contemplate that certain information will generally be treated confidentially, except as qualified by statements in those regulations. For example, the regulations provide that colleges and universities must maintain as confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The regulations also provide that institutions must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

The College will protect the confidentiality of complainants and other necessary parties to the extent practicable. When the College completes publicly available recordkeeping, including disclosure of information as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), it will not include personally identifying information about parties. The Title IX Coordinator or designee will work with the Director of the Department of Public Safety or designee to determine what information about a complainant should be disclosed and to whom this information will be disclosed. Decisions about disclosure will be made by considering factors such as, but not limited to, the privacy interests of the complainant and the potential need for disclosure in order to effectuate the accommodations or protective measures. If it is decided that some disclosure is necessary, complainants will be informed of which information will be shared, with whom it will be shared and why.

Professional Counselors and Health Services Professionals as Confidential Resources

At Landmark College, the professional counselors and health services staff respect and protect confidential communications with clients to the extent that they are able to do so under applicable law. This means that in most cases, these confidential resources will not inform anyone of such communications without a client's consent, and the College will not endeavor to take any action in

response to such communications. These professionals may have the responsibility to disclose otherwise-privileged information appropriately when they perceive an immediate and/or serious threat to any person or property. In addition, medical and mental health professionals are required by law to report any allegation of sexual assault of a person under age 18.

In accordance with May 2020 Title IX regulations, the College will not access, consider, disclose, or otherwise use a party's privileged records or require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Other College Officials

Other College officials are discreet and strive to respect reasonable privacy expectations to the extent practicable, but they are not able to guarantee confidentiality. General inquiries or questions about this policy and its procedures may remain private, and the College will strive to protect the privacy of individuals to the extent it can while maintaining its obligations to uphold relevant policies and regulations and/or to take reasonable steps to promote the safety of members of the College community. When confidentiality is requested, the College will evaluate the request for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment for all students, faculty and staff and to promote the health, safety, or well-being of members of the Landmark community. If an individual who makes a report insists that his or her name or other identifiable information not be revealed and the College is able to respect that request, the College's ability to respond fully to the reported behavior may be limited.

The College will protect the confidentiality of individuals allegedly subjected to Prohibited Conduct to the extent practicable in light of the need to do investigations and conduct disciplinary proceedings.

Community Assistance and Resources for Victims of Sexual Misconduct, Domestic Violence, Dating Violence and/or Stalking

The level of confidentiality that can be provided by confidential on-campus resources, and the obligations of non-confidential responsible employees, who are respectful and discreet but not necessarily confidential, are described immediately above.

Confidential On-Campus Resources

Meg Spicer, Counselor & Sexual Respect Coordinator	(802) 387-6739
Jeff Huyett, Director of Health Services	(802) 387- 6753
Dawn Kenney, Staff Nurse	(802) 387-6302
Counseling Services	(802) 387-1636

Respectful, Discreet But Not Necessarily Confidential On-Campus Resources

Resident Deans
Resident Assistants

Academic Advisors	
Campus Safety	(802) 387-6899
Terence White, Director of Campus Safety	(802) 387-1689
Assistant Dean & Director of Residential Life	(802) 387-6411
Kelly O’Ryan, Dean of Students	(802) 387-6362
Michael Luciani, Vice President for Student Affairs	(802) 387-6713

Off-Campus Community Resources

Women's Freedom Center advocates@womensfreedomcenter.net	24 hour Hotline: (802) 254-6954 Business line: (802)-257-7364
Windham County Victim Advocate	(802) 257-2860
Brattleboro Memorial Hospital ER	(802) 257-8222
Brattleboro Health Center	(802) 258-3905
Windham County Sheriff	(802) 365-4949
Vermont State Police	(802) 722-4600

Reporting and Initial Considerations Regarding Sexual Harassment/Misconduct, Domestic Violence, Dating Violence, or Stalking Complaints

The reporting opportunities and initial considerations outlined below apply to concerns about and complaints of Title IX Sexual Harassment (which includes Title IX-covered sexual harassment, domestic violence, dating violence, sexual assault and stalking as defined above as Title IX Sexual Harassment) and Non-Title Misconduct (which includes sexual harassment, domestic violence, dating violence, sexual assault, sexual exploitation and stalking as defined above as Non-Title IX Misconduct), whether those concerns involve reported Prohibited Conduct directed against students or employees by students, employees or third parties over whom the College has some measure of control.

Reporting by Employees with Oversight Responsibility

Individuals with supervisory or oversight responsibility (for example, Dean of Students, Assistant Dean, Academic Advisors, Campus Safety Staff, Department Chairs, staff supervisors or faculty) are responsible for promptly reporting to the Title IX Coordinator or Human Resources, any complaint or information they learn regarding sexual harassment/misconduct, domestic violence, dating violence, sexual assault or stalking. Failure by a supervisor to appropriately report such complaints and/or alleged acts could result in disciplinary action.

Any student, faculty or staff member who wishes to report a complaint of or concern about Prohibited Conduct is encouraged to contact the Vice President for Student Affairs (Title IX Coordinator), College security personnel, the Dean of Students, Resident Deans, Academic Advisors, Counselors, College Administrators, and/or local law enforcement officials through the means of contact outlined below.

Any person may report concerns or complaints about Prohibited Conduct 24 hours per day, 7 days per week by email to the Title IX Coordinator, Michael Luciani, at mluciani@landmark.edu, during business hours by phone to the Title IX Coordinator at (802) 3876713, or 24/7 to Campus Safety at (802) 387-6899.

Individuals with a disability may request accommodations to ensure their full and equal participation in reporting incidents of Prohibited Conduct, as well as the investigatory and adjudicatory process under this policy. Requests for accommodations in connection with the reporting, investigatory and/or adjudicatory process are determined on an individual basis by the Title IX Coordinator, in consultation with the ADA/Section 504 Coordinator as appropriate.

When a student or employee reports to the College that the student or employee has been subjected to dating violence, domestic violence, sexual assault, or stalking, whether the reported conduct occurred on or off campus, the College will provide the student or employee a written explanation of the student's or employee's rights and options, as described in this policy.

Complaints of sex discrimination by College students, staff or faculty that do not involve alleged sexual harassment/misconduct, domestic violence, dating violence or stalking as defined in this policy will be handled through the Office of Student Life (for students) and the Human Resource Office (for faculty & staff).

Contacting Law Enforcement and Orders of Protection

In addition to (or instead of) the College's processes, any student or employee who wishes to report a complaint of sexual misconduct, domestic violence, dating violence or stalking may and should also pursue criminal charges with local, state, or federal law enforcement agencies including the Windham County Sheriff's Department or Vermont State Police.

The Office of the Vice President for Student Affairs (Title IX Coordinator), Office of Campus Safety, the Office of the Dean of Students, Human Resources Office and Counseling /Health Services Office will offer to, and will upon request, assist students or employees in contacting law enforcement agencies.. For their own part, a complainant may choose to notify such agencies with or without assistance from the College, or may choose not to notify such authorities. The procedures for making a police report will vary depending upon the particular law enforcement agency involved, but in general, making a police report will involve meeting with law enforcement officers for an interview, the collection of evidence, and follow-up communications with law enforcement as their investigation proceeds. Individuals who are being or who may have been subjected to Prohibited Conduct may have the right to obtain orders of protection, restraining orders and/or relief from abuse orders from Vermont courts. The College will support complainants if they wish to have the College's assistance in making contact with law enforcement authorities and other external resources to seek such orders.

The College will respect such orders to the extent applicable. In addition, the College can also impose no-contact conditions on students, employees and third parties over which it has some measure of control. The College will inform complainants of their options in this regard.

Medical Care

Whether or not you decide to pursue criminal charges or a complaint at the College, you are encouraged to immediately seek any necessary medical care after an incident of Prohibited Conduct, and to seek help from appropriate law enforcement, medical or College personnel. Even if

you are unsure initially whether you will want to pursue criminal charges or seek a protection order, it is important to preserve all possible evidence in case you decide at some point to do so.

Therefore, you should refrain from changing clothes, showering, or otherwise changing your physical state after an incident, until after you have consulted with medical personnel about how to best preserve evidence.

In cases that have involved sexual contact, a forensic examination by a Sexual Assault Nurse Examiner (“SANE”) is the best way to preserve potentially valuable evidence. S.A.N.E. examinations are available at local hospitals. The College will assist an individual who would like to be transported to the Brattleboro Memorial Hospital for a S.A.N.E. examination. Having a S.A.N.E. examination does not require an individual to file a police report or pursue criminal prosecution or a protection order, but having an examination can be very important if the individual decides at a later time to pursue any of those options.

You should also endeavor to preserve other evidence that may be relevant to a case of Prohibited Conduct, such as text messages, email messages, other electronically stored information, and other physical evidence. If you have questions about how to do this, you should consult with College officials.

Initial Communication with a Complainant

If a report alleges conduct that would, if proved, constitute Prohibited Conduct, the Title IX Coordinator will:

- promptly contact the complainant to discuss the availability of supportive measures as defined below;
- consider the complainant’s wishes with respect to supportive measures;
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- explain to the complainant the process for filing a formal complaint.

Supportive Measures

If Prohibited Conduct is reported to College authorities, College personnel will work to determine whether alternative academic, transportation, working and/or living situations are reasonably available and necessary in a particular case. Such measures, which are known as supportive measures, will be provided if requested and reasonably available. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter Prohibited Conduct.

Supportive measures may include but are not limited to:

- access to counseling and medical services
- assistance in obtaining a sexual assault nurse examination
- academic accommodations, such as extensions of deadlines or other course-related adjustments, course changes or late drops, or other arrangements as appropriate;
- modifications of work or class schedules;

- assistance in requesting long-term academic accommodations through the Office of Access and Learning Accommodation, if the complainant qualifies as an individual with a disability
- change in class schedules, including the ability to transfer course sections or withdraw from a course;
- campus escort services and safety planning steps;
- mutual restrictions on contact between parties and/or other individuals;
- residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
- assistance navigating off-campus housing concerns;
- changes in work locations;
- leaves of absence;
- increased security and monitoring of certain areas of campus;
- changing transportation or working arrangements or providing other employment accommodations, as appropriate;
- assisting the individual in accessing support services, including, as available, victim advocacy, academic support, counseling, disability, health or mental health services, visa and immigration assistance, student financial aid services, and legal assistance both on and off campus, as applicable;
- voluntary leaves of absence;
- referral to resources which can assist in obtaining an order of protection under Vermont law;
- referral to resources which can assist with financial aid, visa, or immigration concerns;
- no trespass notices prohibiting the presence of an individual on College property; and
- other similar measures.

Requests for supportive measures should be directed to the Title IX Coordinator. Requests will be evaluated and responded to by the Title IX Coordinator or designee after consultation, as needed, with other campus personnel whose cooperation may be necessary or helpful in evaluating or providing requested measures. The Title IX Coordinator is ultimately responsible for coordinating the effective implementation of supportive measures.

The availability of supportive measures will be determined by the specific circumstances of each report. The College will consider a number of factors in determining which measures to take, including but not limited to the needs of the student or employee seeking supportive measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the parties; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the complainant (e.g., protective orders or relief from abuse orders).

All individuals are encouraged to report to the Title IX Coordinator any concerns about the failure of another to abide by any restrictions imposed through supportive measures. In the event of an immediate health or safety concern, individuals should contact 911 immediately. The College will take prompt action to enforce a previously implemented measure, and disciplinary penalties can be imposed for failing to abide by a College-imposed supportive measure.

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

As noted above, the College will take reasonable steps to maintain as confidential any supportive measures provided, to the extent that maintaining such confidentiality does not impair the College's ability to provide the supportive measures.

Interim Suspension, Emergency Removal and Administrative Leave

Interim Suspension of Students in Non-Title IX Misconduct Cases

The College may decide at its discretion to suspend a student respondent on an interim basis, that is, while an investigation is pending, in cases that fall within the definition of Non-Title IX Misconduct outlined above. The determination of whether to impose an interim suspension will be made by the Title IX Coordinator in consultation with other College officials as appropriate. A respondent may be suspended on an interim basis when the College has received information which indicates that the respondent's continued presence on campus will likely have a serious effect on the physical, mental, or emotional health, safety or well-being of another person, when physical safety is seriously threatened, or when the ability of the College to carry out its operations is threatened or impaired. The College may permit written challenges to such decisions at its discretion, through procedures determined by the College to be appropriate under the circumstances of a particular case.

Emergency Removal of Students or Employees in Title IX Sexual Harassment Cases

When the College determines that there is an immediate threat to the physical health or safety of any student or other individual arising from reported conduct that falls within the definition of Title IX Sexual Harassment stated in this policy, the College can remove a respondent from its education program or activity (which may include removing an employee respondent from their employment at the College, subject to any rights or procedures provided in any applicable collective bargaining agreement) and issue any necessary related no-trespass and no-contact orders. The College will make the decision to remove a respondent from its education program or activity based on an individualized assessment and risk analysis.

If the College makes such a decision, the respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Specifically, the respondent shall have forty-eight hours in which to submit a letter to or appear personally or virtually before an individual designated by the President to contest the emergency removal (though a meeting could be scheduled sooner if requested by the respondent, if practicable).

Administrative Leave in Title IX Sexual Harassment Cases

The College always maintains the discretion to place non-student employee respondents on paid administrative leave during the pendency of an investigation and resolution process as outlined below.

The College may also place a non-student employee respondent on unpaid administrative leave during the pendency of an investigation and resolution process.

The College may place student-employee respondents on administrative leave from their employment during the pendency of an investigation and resolution process where deemed appropriate as a supportive measure, under circumstances where it can do so without unreasonably burdening the student-employee respondent.

Formal Complaints of Sexual Harassment/Misconduct, Domestic Violence, Dating Violence, Stalking or Related Retaliation

A student or employee may file a formal complaint of Prohibited Conduct by a student or a third party by contacting the Title IX Coordinator (or in the case of a complaint against the Title IX Coordinator, by contacting the President of the College, who will designate an alternate contact person). A student or employee may file a formal complaint of Prohibited Conduct by an employee or a covered third party by contacting the Director of Human Resources (or in the case of a complaint against the Director of Human Resources, by contacting the President of the College, who will designate an alternate contact person). A student who is filing a complaint against an employee or covered third party may also seek assistance from the Title IX Coordinator, who will provide support to the student in making contact with the Director of Human Resources. Relevant contact information is provided above.

The College's procedures for handling formal complaints will be prompt, fair and impartial from the initial investigation to the final result, in that they will be:

- Completed within reasonably prompt time frames as designated in the College's policies, which time frames may be extended for good cause and/or due to extenuating circumstances, with written notice to the complainant and the respondent of the delay and the reason for the delay;
- Conducted in a manner that is consistent with the College's policies and transparent to the complainant and the respondent, including timely notice of meetings at which the complainant or respondent may be present, and providing the complainant, the respondent, and appropriate College officials timely and equal access to any information that will be used during the College's process in accordance with the policies herein; and
- Conducted by officials who do not have a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent in a particular case. If either party is concerned that an official involved in an investigation or adjudication may be biased or have a conflict of interest, the party should share their concerns with the Title IX Coordinator immediately. If their concern is about the Title IX Coordinator, the party should contact the President of the College.

A formal complaint under these procedures is a document filed by a complainant, signed personally or electronically by the complainant (or signed by the Title IX Coordinator under circumstances outlined below), and must request that the College investigate reported Prohibited Conduct. The formal complaint may be prepared by the complainant and submitted in writing to the Title IX Coordinator, or may be written by the Title IX Coordinator based upon the complainant's verbal description of the alleged conduct, then submitted to the complainant for their review, editing and signature.

Determinations of Applicable Procedures, Dismissals, Transfers and Appeals of Such Determinations

When a complainant requests an investigation, the Title IX Coordinator will promptly upon receipt of a formal complaint:

1. determine whether the conduct alleged would, if proved, constitute Title IX Sexual Harassment (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, or sex-based Domestic Violence, Dating Violence or Stalking) as defined in the Title IX Sexual Harassment definition stated above;

2. determine whether the conduct allegedly occurred in the College's education program or activity;
3. determine whether the conduct allegedly occurred in the United States; and
4. determine whether at the time the formal complaint was made, the complainant was participating or attempting to participate in a College program or activity.

If a formal complaint of conduct that would, if proved, satisfy all 4 of these elements and constitute Title IX Sexual Harassment as defined in this policy is filed by a complainant or signed by the Title IX Coordinator, it will be investigated and resolved through the procedures applicable to Title IX Sexual Harassment matters as outlined below.

The College will, as noted above, investigate alleged Title IX Sexual Harassment when a complainant submits a signed or electronically-submitted formal complaint to the Title IX Coordinator and requests an investigation. The Title IX Coordinator may also choose at their discretion to sign a formal complaint and initiate an investigation, even if the complainant chooses not to do so. In cases where the complainant does not wish to submit a formal complaint but the Title IX Coordinator decides in their discretion to sign a complaint and initiate an investigation and resolution process, the Title IX Coordinator will not be a complainant or otherwise a party to the matter.

If some but not all of the conduct alleged in the complaint satisfies all 4 of these elements and a formal complaint is received from a complainant or signed by the Title IX Coordinator, the College will address the entire matter through the procedures applicable to Title IX Sexual Harassment matters as outlined below (that is, it will as required by federal regulations to follow Title IX Sexual Harassment procedures to address the alleged Title IX Sexual Harassment, and it will, to promote efficiency, choose to follow Title IX Sexual Harassment procedures to address Non-Title IX Misconduct and other non-Title IX alleged misconduct in such mixed cases, so that all related misconduct may be addressed through one investigation and resolution process).

If it appears based upon initial review or upon information gathered during an investigation that the matter does not satisfy and/or no longer satisfies all 4 of these elements, the College will, as required by the May 2020 Title IX regulations, dismiss the matter for purposes of the Title IX Sexual Harassment process, and will, to the extent deemed appropriate by the College, transfer it for handling under other College procedures. Investigation and resolution of a matter that does not fall within the definition of Title IX Sexual Harassment may be pursued, dismissed altogether, or transferred to another College process, as deemed appropriate in the College's discretion and/or as appropriate under applicable law.

Even if the initial allegations of a matter fall within the definition of Title IX Sexual Harassment, the College may (but is not required to) dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled at or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint is dismissed by the College under the circumstances described above, the College will simultaneously provide to the parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and notice of the parties' opportunity to appeal such dismissal through the appeal procedures outlined below.

If the respondent is a student and an employee, the Title IX Coordinator will determine which procedures apply based upon the facts and circumstances, such as whether the respondent's status as a student or an employee predominates in the context of the Prohibited Conduct. If a student-employee is found to have engaged in Prohibited Conduct, the student-employee may be subject to sanctions both in connection with their employment, and in connection with their student status, as appropriate under these and other applicable procedures.

Notice in Title IX Sexual Harassment Cases

If the College initiates an investigation of reported Title IX Sexual Harassment, it will provide to the parties a written notice (by electronic or other means) that includes:

- Information about the College's formal and informal resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the College's presumption of good faith reporting and a summary of the College's false information policy;
- Notification that parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notification of existing counseling, health and mental health services available on campus and/or in the community;
- Notification that the parties may inspect and review evidence during the investigation and resolution process, as provided below; and Notification that taking any retaliatory action (directly or through others) against any person involved in the investigation is prohibited and will be considered a separate violation of College policy.

If in the course of an investigation the College decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

Consolidation of Formal Complaints

The College may consolidate formal complaints as to allegations of Title IX Sexual Harassment and/or Non-Title IX Misconduct (in mixed cases as described above) 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 such Prohibited Conduct arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

Investigations in Title IX Sexual Harassment Cases

The Title IX Coordinator will appoint an investigator or investigators (referred to in the singular here for convenience). Investigators may be College employees or third party contractors, as determined

at the College's discretion. The College will provide notice to the parties of the identities of the investigators. If a party believes that an investigator has a bias for or against complainants or respondents generally or for against a particular complainant or respondent, or has a conflict of interest, the party may within two (2) business days submit a written objection to the Title IX Coordinator that outlines the basis for their objection to the investigator's service. The Title IX Coordinator will make a decision on such objections, and will appoint any alternate investigator, and follow this process as necessary, until an investigator is selected to conduct the investigation.

If a respondent who has been notified of an investigation fails to cooperate with the investigator, the investigation may proceed, a finding may be reached, and a sanction may be imposed based on the information available. In a case where a criminal investigation or criminal proceeding is underway regarding the same incident(s), the College may choose to delay its investigation for a reasonably short period while law enforcement officials are gathering evidence. During this period, the College may implement supportive measures to promote the safety and well-being of the parties and the College community while the law enforcement agency's fact-gathering is in progress. The College, after a reasonable period and communication with law enforcement, will initiate or resume, and complete its own investigation.

The College will endeavor to complete the investigation portion of the process within 90 days of issuing a notice of investigation as described above, but this may be extended at the College's discretion due to factors such as the complexity of the matter, the availability of witnesses, requests by law enforcement agency for a temporary delay in the investigation process (see below), College breaks, and other legitimate reasons.

Deadlines for parties' review of information and submission of comments may be extended upon request for good cause, at the discretion of the Title IX Coordinator or their designee.

The investigator will conduct an appropriate investigation which may include interviews with the complainant, the respondent, and other persons with information. These interviews may be audio-recorded. As required by the Clery Act, individuals conducting investigations and determination proceedings will receive training annually on the issues related to sexual assault, domestic violence, dating violence, and stalking, and how to conduct an investigation and/or determination process that protects the safety of complainants and promotes accountability.

To the extent permitted by law, the complainant and respondent will be afforded the same rights and opportunities throughout the investigation and adjudication process, including the opportunity to recommend witnesses and submit evidence. However, investigation logistics, including but not limited to the sequence of interviews, the decision to interview particular witnesses, and the decision to allow or consider evidence offered by the parties, are within the discretion of the investigator.

The complainant and respondent will be asked to identify, preserve, and submit all evidence pertaining to the matter under investigation, and to identify witnesses they believe may have relevant testimony to share. The investigator is not required to consider the evidence submitted or interview any particular witness, even if identified by one of the parties. However, in determining whether to interview witnesses or review evidence, the investigator should consider such factors as equity, fairness, thoroughness, and impartial treatment of both parties. All participants in the investigation are expected to cooperate fully by providing complete, accurate, and truthful information.

Complainants and respondents are entitled to the same opportunities to have an advisor of their choice present at any interviews, meetings, or proceedings that they are attending related to the

investigation and adjudication process under this policy. The advisor may advise the complainant or respondent privately, but cannot act as a speaking advocate at a meeting. An investigator or other College representative may terminate meetings, and/or proceed with the investigation or adjudication based on otherwise-available information, if an advisor is disruptive or otherwise refuses to comply with the requirements of this policy.

While each party may have an advisor of choice, they may not compel any specific person to serve as their advisor. The College's faculty and/or staff may be available to serve as advisors, but none are required to do so.

An individual designated by the Title IX Coordinator will facilitate communications between the parties and the investigator.

Further, the following provisions will apply to Title IX Sexual Harassment Investigations:

- Parties' equal opportunity to present witnesses may include evidence from fact and expert witnesses; and
- Parties are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence; and
- Parties whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Preliminary Investigative Report in Title IX Sexual Harassment Cases

When the investigator has gathered all of the information that they determine should be gathered as an initial matter, the investigator will prepare a preliminary investigative report. The preliminary investigative report will summarize relevant evidence but will not contain any recommendations regarding whether the respondent violated this policy or any other College policy at issue.

Further, the following additional provisions will apply during the preliminary investigative report stage of the investigation:

- The College will provide each party with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which College does not intend to rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Such evidence will not include un-redacted privileged records or information that may have been gathered or received during the investigation, absent written consent from the party holding the privilege.
- The College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- Parties and advisors are not permitted to download, print, or copy such evidence subject to inspection and review, and are not permitted to re-disclose such evidence without the College's permission. Parties and advisors will be required to sign an acknowledgment form indicating that they understand these prohibitions. Violations of these prohibitions may subject parties to College discipline under applicable conduct codes.

Review and Response to Preliminary Investigative Report in Title IX Sexual Harassment Cases

The complainant and the respondent will have an opportunity to review the preliminary investigative report and provide written responses to the report. The complainant and the respondent must submit any comments, feedback, additional documents, evidence, suggested questions for individuals interviewed, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigator, additional documents or other evidence, within 10 calendar days after the preliminary investigative report is sent or made available to them for review. The parties' written responses will be considered by the investigator prior to completion of the final investigative report, and some or all of the responses may be attached or otherwise incorporated into the final investigative report.

In the event that new, relevant information is provided or identified at this stage, the information will be incorporated into the preliminary report as deemed appropriate by the investigator.

Final Investigative Report in Title IX Sexual Harassment Cases

After considering any written response submitted by either party, or after the 10 calendar day comment period has lapsed without receiving a written response or responses, the investigator will address any relevant issues identified by the complainant and/or the respondent, and as appropriate, pursue any additional investigative steps as needed. The final investigative report will include the investigator's non-binding recommendation as to whether the respondent should be found responsible for violating the policy provisions at issue. The investigator's recommendation will be reached by applying the preponderance of evidence standard, i.e., whether it is more likely than not that the policy was violated. The final investigative report will be reviewed by the Title IX Coordinator before it is issued. Final investigative reports will be provided simultaneously to the parties and their advisors, if any. The College will give each party an opportunity to review the other party's written response, if any.

Further: :

- The final investigative report created by the investigator will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator;
- At least 10 calendar days prior to the hearing referenced below, the College will send to each party and the party's advisor, if any, the final investigative report and exhibits in an electronic format or a hard copy, for their review and written response;
- Any written response a party wishes to provide must be submitted to the Title IX Coordinator or designee within 10 calendar days of receiving the final investigative report and exhibits; and
- The final investigative report and the parties' written responses, if any, will be provided to the hearing officer in advance of the hearing.

Hearings in Title IX Sexual Harassment Cases

The procedures outlined immediately below in this section apply to cases that involve allegations that a student or employee respondent engaged in conduct that, if proved, would fall within the definition of Title IX Sexual Harassment.

Live hearings will be provided in Title IX Sexual Harassment matters, as required by the May 2020 Title IX regulations.

Hearing Officers

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator. In selecting a hearing officer for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent. The College will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within 3 calendar days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary.

Advisors

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the College will without fee or charge to the party provide an advisor of the College's choice, again for the limited purpose of conducting cross-examination on behalf of that party. No later than 10 calendar days before the hearing, parties should inform the Title IX Coordinator of the identity of any advisor of choice who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

At a time and manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate College-provided advisor.

Requests for Appearance of Witnesses

If a party wishes to have an individual appear at the hearing as a witness, they must provide notice of the identity of the proposed witness and a brief description of the subject matter of the witnesses' testimony to the Title IX Coordinator or designee at least 10 calendar days before the

date of the hearing. The Title IX Coordinator or designee, in consultation with the hearing officer as necessary, will determine whether the witness is likely to have information that is relevant to the hearing, and if it is determined that the witness is likely to have relevant information, the Title IX Coordinator or designee will inform the witness that their presence at the hearing is required (to the extent that the College has jurisdiction to require the presence of the witness) or requested.

Conduct of Hearings and Relevance

At or before the hearing, the hearing officer will receive a copy of the final investigative report, any attachments thereto, and copies of the parties' written responses to the final investigative report, if any, which will be part of the information of record to be considered by the hearing officer. The recommendation regarding responsibility made by the investigator in the final investigative report is only advisory and is not binding on the hearing officer; the hearing officer will make an independent determination regarding responsibility based upon the investigative report, evidence admitted at the hearing, and the testimony and cross-examination of parties and witnesses at the hearing, as applicable.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer, followed by opening statements from any party who wishes to provide one, followed by the hearing officer's asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility.

Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to each witness, then the parties' advisors will be permitted to ask relevant questions of witnesses.

In accordance with May 2020 Title IX regulations, such cross-examination by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to hearing officer decisions regarding relevance during a hearing.

Regarding the evidence subject to inspection and review that was provided to the parties and their advisors under the Title IX Sexual Harassment matter-specific investigation procedures outlined above, a copy of such evidence will be made available at the hearing, and each party and/or their advisor (as applicable) will have an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), is not relevant unless the person holding the privilege has waived the privilege.

At the request of either party, the College will provide for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing.

Record of Hearings

The College will create an audio or audiovisual recording and/or transcript, of any live hearing, and will make it available to the parties for inspection and review.

Determinations Regarding Responsibility

In student respondent cases, within 14 days after the hearing, the hearing officer will prepare and issue a written determination regarding responsibility and, if applicable, any sanctions.

In employee respondent cases, within 14 days after the hearing, the hearing officer will prepare a decision regarding responsibility. If the hearing officer determines that the respondent is not responsible for violations of College policy, the hearing officer will issue a written determination as provided below. If the hearing officer determines that the respondent is responsible for violating College policy, the hearing officer and/or a separate sanctioning officer (as deemed appropriate by the College) will work together to produce a written determination regarding responsibility and any sanctions. provide notice of that decision to the Director of Human Resources (or designee). In determining responsibility, the hearing officer will apply the preponderance of the evidence standard.

Written determinations will include:

- Identification of the section(s) of the College's Title IX Sexual Harassment policy alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of sexual harassment in the College’s Title IX Sexual Harassment Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and, where necessary and in collaboration with the sanctioning officer, a statement regarding any recommended sanctions and the rationale therefor; and
- Identification of the College’s procedures and permissible bases for the complainant and respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

The determination will also indicate whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the complainant, but will not provide details about any such remedies.

If sanctions are necessary, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination regarding responsibility and, if necessary, any sanctions as determined through the procedures outlined below.

Standard of Proof

Proceedings under this policy use the “preponderance of the evidence” or “more likely than not” standard of proof. This means that for a recommendation (by an investigator) or a finding (by a hearing officer) of responsibility to be made, it must be determined that there is more than a 50 percent likelihood that actions or behavior in violation of the policy at issue did occur.

Sanctions

Sanctions for violations of this Policy may include one or more of the following:

- Expulsion
- Suspension
- Written Reprimand or Warning
- Verbal Reprimand or Warning
- Separation from employment and/or student-employment
- Disciplinary Probation
- Employee or Faculty Probation
- Nonrenewal of contract
- Referral to another College employment-related process for the determination of employment-status-related sanctions
- Revocation of honors, awards, or degrees
- Restricted access to College facilities or activities, including student organizations or athletic or intramural participation
- Community Service
- Issuance of a “No Trespass” or “No Contact” Order
- Removal from student housing

In addition, the College may determine that additional remedies are warranted, such as education or training for some or all members of the College community.

In cases where a student is found responsible for Prohibited Conduct as defined above, sanctions will be determined by the hearing officer.

In cases where a faculty member or staff member is found responsible for Prohibited Conduct as defined above, sanctions (which may include referral to a separate process for the determination of employment-status-related sanctions, as appropriate), will be determined by a College administrator appointed by the President.

If applicable, the sanctioning officer will determine sanctions after receiving notice from the hearing officer that a determination of responsibility has been made in a particular case, and based upon a review of file documents and other case-related resources as deemed appropriate at the discretion of the sanctioning officer. The sanctioning officer and the hearing officer will collaborate to produce one written determination, which will provide notice to the parties of findings regarding responsibility, resulting sanctions, and the rationale therefor, along with the other information listed in the written determination description section above. Written determinations regarding responsibility and sanctions will be communicated to the parties simultaneously.

Disposition Without A Determination/Dean's Sanction

In cases where the facts are not in dispute, and a student respondent is prepared to accept responsibility for their actions, the College may, once it has determined that the student respondent understands fully but has decided not to take advantage of the rights provided by the procedures described above, offer the option of Disposition Without a Determination, which is also called a Dean's Sanction. For a full description of the Dean's Sanction process, please see the "Disciplinary Sanctions" section of the Student Code of Conduct and Policies.

Appeal Procedure in Title IX Sexual Harassment Cases

Each party to a case falling under this policy has a right to appeal the Title IX Coordinator's dismissal of a formal complaint for Title IX purposes or a determination regarding responsibility on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- 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 that affected the outcome of the matter.

Within seven (7) calendar days of the date on which the written determination regarding responsibility and, if applicable, sanctions, is transmitted to the parties, either the complainant or respondent may appeal the decision to an appeals officer. The appeals officer is the President of the College. Appeals are initiated by the appealing party's delivery of a statement of appeal to the Title IX Coordinator, who will forward the statement of appeal to the appeals officer. The other party may be notified of any submitted appeal through the Title IX Coordinator or their designee. The other party may submit a written response to the appeal within 5 working days of delivery of the appealing party's appeal. Both parties will be informed of any change to the results of a disciplinary process that occurs prior to the time that such results become final, and when such results become final. The decision of the appeals officer is final.

Informal Resolution in Title IX Sexual Harassment Cases

Informal resolution is a voluntary resolution option that does not involve formal hearing-based resolution procedures. Informal resolution may be used in Title IX Sexual Harassment matters in which a formal complaint has been filed by a complainant or signed by the Title IX Coordinator.

At any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process (e.g., mediation or restorative justice) where requested by a party and agreed to by both parties. If a party requests the initiation of an informal resolution process and the Title IX Coordinator agrees that the matter is appropriate for informal resolution, the College will provide to each party a written notice that discloses:

- The allegations;
- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations-
 - As noted below, the College generally permits parties to withdraw from the informal resolution process and initiate or re-initiate a formal investigation and hearing process at any time before the informal resolution process is completed and any informal resolution is agreed to in writing by the parties); and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared (for example, statements made by parties in the course of an informal resolution process will not be considered by the College in any subsequent formal resolution process in the event that the matter is not resolved through the informal resolution process.

All parties and the Title IX Coordinator must agree to informal resolution for this option to be used. The Title IX Coordinator will assess the request for informal resolution in light of factors such as, but not limited to, the severity of the alleged violation and the potential risks to campus community members posed by the reported misconduct. The College will only proceed with an informal resolution process if both parties provide their voluntary, written consent to having the matter resolved through the informal resolution process.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them and which is approved by the Title IX Coordinator (in consultation with other College administrators as deemed necessary). A party may withdraw from the informal resolution process at any time prior to their execution of a written informal resolution agreement. After an informal resolution is agreed to in writing between the parties, neither party may initiate a formal resolution process regarding the same factual allegations.

At any time before a matter is resolved through informal resolution, the Title IX Coordinator may terminate an informal resolution process and initiate or re-initiate a formal investigation and resolution process at any time, as they deem appropriate in their discretion.

The College will not offer to facilitate an informal resolution process in any matter that involves allegations that an employee sexually harassed a student.

Educational Programming

The College will provide educational programming for students and employees addressing the issues of domestic violence, dating violence, sexual assault, and stalking, which will include: 1) primary prevention and awareness programs for all incoming students and new employees; 2) safe and

positive options for bystander intervention; 3) information on risk reduction to recognize warning signs of abusive behavior; 4) ongoing prevention and awareness programs for students, faculty and staff who have responsibility for working with students.