



## **McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence**

**In accordance with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* and its implementing regulations, 34 C.F.R. Part 106, McDaniel College (“McDaniel College” or “the College”) does not discriminate on the basis of sex in any of the College’s educational programming and activities. The College is committed to preserving an educational and employment environment that is free from gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, and interpersonal violence and stalking in accordance with Title IX, the United States Department of Education and the 2013 Reauthorized Violence Against Women Act. Accordingly, the College maintains comprehensive policies and procedures to ensure that all rights available under Title IX are upheld. Inquiries concerning the application of Title IX may be referred to the College’s Title IX Coordinator at 410-857-2205 or to the Office of Civil Rights of the United States Department of Education at: <http://www2.ed.gov/about/offices/list/ocr/index.html>.**

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## **I. McDaniel College Contacts and Resources**

### **A. On Campus Contacts**

Title IX Coordinator: Jennifer Glennon, 410-857-2205, [jglennon@mcdaniel.edu](mailto:jglennon@mcdaniel.edu),  
McDaniel College, 2 College Hill, Westminster, MD 21157

The Title IX Coordinator oversees the implementation of this Policy. She is available to meet with individuals to discuss the policy, the options for making a complaint, accessing medical attention, interim measures, academic accommodations, confidential counseling resources, and any other questions related to McDaniel's response to interpersonal violence.

Dean of Students: Elizabeth Towle, 410-857-2241, [etowle@mcdaniel.edu](mailto:etowle@mcdaniel.edu),  
McDaniel College, 2 College Hill, Westminster, MD 21157

The Dean of Students is available to meet with individuals to discuss the policy, the options for making a complaint, accessing medical attention, determining appropriate interim measures and academic accommodations, confidential counseling resources, and any other questions related to McDaniel's response to interpersonal violence.

Department of Campus Safety: Phone: 410-857-2202; Text: 443-821-1272  
McDaniel College, 152 Pennsylvania Avenue, Westminster, MD 21157

The Department of Campus Safety staff are available 24 hours a day/7 days a week to help an individual access and provide transportation for medical care and/or a SAFE exam through Carroll Hospital Center, confidential counseling resources, discuss safety planning and explain reporting options related to the College and local law enforcement, including applying for a peace order through the Carroll County Court System.

### **B. On Campus Confidential Resource for Full Time Students**

McDaniel College Wellness Center (located in Winslow Center): 410-857-2243  
The Wellness Center medical professionals (health and counseling) are confidential resources for students. A student may choose to make an appointment with a counselor or medical staff person to discuss the situation that has occurred and the options for how to respond to the incident.

### **C. Confidential Resource for Employees**

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Employee Assistance Program (EAP) Business Health Services (BHS): 1-800-327-2251 (24 hours a day/7 days a week)

The EAP is confidential, free service to employees. Services include clinical assessment, short-term face-to-face or telephonic counseling, and referrals to community resources.

## **B. Confidential Resources External to the College For Any Individual**

Carroll Hospital Center: 410-848-3000 for medical and SAFE exams (Please note that Carroll Hospital Center procedures require that all incidents of sexual assault be reported to the Westminster Police, unless an individual wishes to have a SAFE Exam anonymously as “Jane/John Doe”)

Family and Children’s Services of Central Maryland: 443-865-8031 [www.fcsmd.org](http://www.fcsmd.org)  
This is a free and confidential hotline available 24 hours a day/7 days a week for assistance with domestic violence.

Love Is Respect: 1-866-331-9474 [www.loveisrespect.org](http://www.loveisrespect.org) This is a free and confidential hotline available 24 hours a day/7 days a week.

Maryland Coalition Against Sexual Assault (MCASA) [www.mcasa.org](http://www.mcasa.org) (The website provides a detailed list of rape crisis centers located in Maryland.)

National Domestic Violence Hotline: 1-800-799-7233, 1-800-787-3224 (TTY) <http://www.thehotline.org> This is a free and confidential hotline available 24 hours a day/7 days a week.

National Sexual Assault Hotline: 1-800-656-HOPE This is a free and confidential hotline for incidents occurring outside of Maryland available 24 hours a day/7 days a week.

Rape Crisis Intervention Service of Carroll County: 410-857-7322 [www.rapecrisiscc.org](http://www.rapecrisiscc.org) All services are provided free of charge. Services are available to any victim of sexual violence age 12 and older, and secondary victims. Rape Crisis provides a 24 hr hotline 410.857.7322. Walk-in crisis intervention (Monday-Friday) Individual and group therapy. Hospital, court, school, detention center, and police accompaniments. Information and referrals.

## **II. Policy Statements and Definitions**

### **A. Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence**

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McDaniel College strives to assist in the development of liberally educated persons who have a commitment to responsible moral, social, and political action. To instill the desire for truth and to provide the tools by which truth may be pursued, students, faculty, and staff must maintain a relationship of mutual respect and integrity. Any conduct which violates this trust compromises the goals of the College. Gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence and stalking are reprehensible wrongs that violate another person's rights and constitute unacceptable behavior. Such conduct destroys the academic climate by distorting the interpersonal and professional relationships. Any individual who believes that they have been the object of any of these prohibited acts, including retaliation, or has witnessed such acts may use these procedures to make a report or file a grievance. McDaniel will use these procedures to investigate any reported incidents, regardless of the sex of the complainant or respondent, including when the complainant and respondent are members of the same sex.

McDaniel College is committed to maintaining a safe and secure campus environment that is free from acts of violence, intimidation and fear. Sexual violence, whether committed by a stranger or by an acquaintance, threatens the personal safety, educational experience, and the well-being of members of the McDaniel College community. McDaniel College will not tolerate violence or assault of any kind, including sexual assault.

If the College becomes aware of incidents of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, and interpersonal violence or stalking, the College will take immediate action to eliminate the discrimination, harassment, or violence, prevent its recurrence, and address its effects.

During new student orientation, sexual assault awareness month, and throughout the academic year, the Division of Academic Affairs and Campus Life and student organizations sponsor a variety of educational programs focusing on gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking and prevention and awareness of such acts. Similarly, new employees will receive training and education on gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking and prevention and awareness of such acts. Additionally, the Title IX Response Team will conduct a biennial climate survey in accordance with state regulations.

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## B. Prohibited Conduct Policy Definitions

The following list describes conduct that is prohibited by the McDaniel College Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence Policy.

**Coercion** is the use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, isolation and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion is evaluated based on the intensity, frequency, and duration of the comments or actions. Coercion renders an individual unable to consent.

**Force** is the use or threat of physical restraint or violence to overcome an individual's freedom of will to choose whether or not to participate in sexual contact. Force renders an individual unable to consent.

**Gender-Based Discrimination** refers to the unfair treatment of one person with respect to others in the same work or academic role, in terms of, including but not limited to, hiring, promotion, compensation practices, retention, grading, *etc.* because of that person's gender, including, but not limited to, pregnancy, parental status, gender identity or failure to conform to stereotypical notions of masculinity or femininity.

**Gender-Based Harassment** includes, but is not limited to, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**Gender Bias** is a preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender.

Creating a **Hostile Environment** refers to instances in which a violation creates an environment that would be intimidating, hostile, or offensive to a reasonable person.

**Intimate Partner Violence** is not defined for the purposes of this policy as a distinct form of sexual misconduct. Rather, intimate partner violence shall include any act or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with the Respondent. The existence of such a relationship shall be determined based on the consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. This may encompass

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behavior including, but not limited to, physical, sexual, and emotional violence. It may involve one act or an ongoing pattern of behavior. This may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner whether communicated face-to-face or electronically. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientations and does not discriminate by racial, social, or economic background. The College will not tolerate intimate partner violence of any form. The College recognizes that sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating, or other social relationship of a romantic or intimate nature with the Complainant. Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

**Intimidation** is to place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to an actual physical attack.

**Retaliation** is defined as any act or attempt to counterattack or seek retribution from any individual, who in good faith reports a possible violation, participates in an investigation, engages in bystander intervention or participates in the resolution of a grievance. Acts of retaliation may include, but are not limited to, personal attacks, social media postings, or any other mode or method of hostile communication attempting to influence another person to treat any complainant, witness or respondent to a complaint of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking with hostility, negatively talking about any person involved or who witnessed the alleged acts, or causing physical or emotional harm to any person allegedly involved in the gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking.

McDaniel College strictly prohibits retaliation of any kind against an individual who in good faith reports a possible violation, participates in an investigation, engages in bystander intervention or participates in the resolution of a grievance. Reported incidents of retaliation will be investigated and addressed in accordance with the relevant disciplinary procedures.

**Sexual Assault** refers to an offense that meets the definition of rape, fondling, incest, or statutory rape. Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant. Fondling is defined as

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the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of the individual's age or temporary or permanent mental incapacity. Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. Statutory rape is defined as sexual intercourse with a person who is under the statutory age of consent.

- Sexual assault is committed against a person's will, as evidenced by refusal, lack of consent or the use of force, threat or intimidation.
- A respondent's level of intoxication shall not diminish their responsibility for sexual assault.

**Sexual Exploitation** is purposefully taking sexual advantage of another person without consent. It may involve use of one's own or another individual's nudity or sexuality. Examples of sexual exploitation include, but are not limited to:

- Voyeurism (Such as watching or taking pictures, videos, or audio recordings of another person in a state of undress or of another person engaging in a sexual act without the consent of all parties).
- Disseminating, streaming, or posting pictures or video of another in a state of undress or of a sexual nature without the person's consent.
- Exposing one's genitals to another person without consent.
- Prostituting another individual.
- Knowingly exposing another individual to a sexually transmitted disease.
- Knowingly assisting another person with committing an act of sexual misconduct.

**Sexual Harassment** is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment includes, but is not limited to, sexual remarks or behavior directed at an individual, inappropriate and offensive sexual advances, solicitation of sexual activity or other sex-linked behavior by promise of rewards or threats of punishment, unwanted or impermissible physical contact of a sexual nature, jokes, insinuating remarks, or references to

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physical characteristics, posters, pictures, or calendars with sexual overtones or content displayed in the work or academic environment, and sexual violence.

**Sexual Violence** refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (see Definition of "Consent" below) due to the complainant's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including, but not limited to, rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

**Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Examples of stalking behaviors or activities include, but are not limited to: (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, social media postings, written letters, gifts, or any other communications that are unwelcome; (2) inappropriate use of online, electronic or digital technologies, including but not limited to, posting of pictures or text in chat rooms or on websites, sending unwanted/unsolicited e-mail or talk requests, and posting private or public messages on Internet sites, social networks, and/or school bulletin boards; (3) pursuing, following, waiting, 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 or "peeping"; (5) gathering information about an individual from friends, family, or co-workers; and (6) accessing private information through unauthorized means.

#### D. Other Definitions

**Bystander Intervention** refers to safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options and taking action to intervene.

**Character Witness** refers to an individual who attests to another individual's moral conduct or good reputation. A character witness does not have first-hand knowledge of an event.

**Complainant** refers to the person who allegedly experienced a violation of the McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms

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of Interpersonal Violence. A Complainant may be a current or former student who makes a complaint under the Policy and who was enrolled as a student at the College at the time of the incident that is the basis of the complaint.

**Consent** refers to an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. It is an informed decision made freely and actively by all parties.

- Individuals should not make assumptions about another individual's willingness to participate in sexual activities.
- If confusion or ambiguity regarding consent arises at any time during the sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue.
- Consent may not be inferred from, for example, silence, passivity, or lack of active resistance.
- A current or previous dating, sexual or marital relationship is not sufficient to constitute consent.
- Consent must be given for each sexual act. Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Conduct will be considered "without consent" if no consent, verbal or nonverbal, is given.
- Impairment due to drugs or alcohol does not diminish each party's responsibility to obtain consent.
- A disparity in power between two parties diminishes the ability to obtain consent. Members of faculty and staff are prohibited from entering any type of sexual relationship with a student, other faculty or other staff within a direct or indirect reporting line.

**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.

**Employee** refers to any individual who is actively employed by the College and receives W-2 taxable income. If an employee also is an enrolled student in any McDaniel course, their primary role will be considered during the use of this policy.

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**Incapacitation**-An **incapacitated person** is unable to understand the nature of the sexual interaction or freely consent to sexual activity due to excessive consumption of alcohol or other drugs, a temporary or permanent physical or mental health condition, being asleep or having lost consciousness.

Evaluating incapacitation also requires an assessment of whether a person should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a reasonable person. An individual who engages in sexual activity with someone the individual knows, or reasonably should know, is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy.

**Reasonable Person** means an individual under similar circumstances.

**Respondent** refers to the person who has allegedly committed a violation of the McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence. A Respondent may be a current or former student who responds to a complaint under the Policy and who was enrolled as a student at the College at the time of the incident that is the basis of the complaint.

**Responsible Person** refers to all Divisional Vice Presidents, all Deans and Associate Deans, all employees in the Human Resources Department, Campus Life, Campus Safety, Residence Life, including resident advisors, and Student Engagement. Faculty members and other staff members not set forth above are not included in the definition of responsible persons.

**Student** refers to a member of the McDaniel College student body who has deposited or is enrolled for classes within the McDaniel College course offerings or is participating in a College sanctioned activity. If a student also is employed by the College, their primary role will be considered during the use of this policy.

**Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Third Party** refers to any individual that is on campus and not defined as a student or employee. This includes but is not limited to volunteers, guests, visitors, third party vendors, etc.

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**Witness** refers to an individual who observes or has relevant information about an event or complaint.

### III. Resources and Reporting to External Authorities

#### A. What To Do If You Experience an Act of Sexual Assault, Sexual Violence, Stalking or Intimate Partner Violence

**Go to a safe place.** Call someone you trust for support. Remember that being assaulted is not your fault.

**Seek medical attention immediately** to provide options for the prevention of sexually transmitted infections, internal injuries, and the possibility of pregnancy. A medical examination, performed by a specially trained nurse, is available at Carroll Hospital Center (410-848-3000) or the Carroll County Rape Crisis Center (24 Hour Hotline: 410-857-7322).

**Transportation** can be arranged by the Department of Campus Safety (Phone: 410-857-2202; Text: 443-821-1272 or Ext. 2202), or by calling the ambulance at 911.

**Have evidence collected as soon as possible.** Evidence collection is necessary for the investigation of the crime. Evidence may include pictures of injuries, a forensic examination, texts, phone records, social media interactions, medical records, video recordings, photographs, receipts, diaries/journals, voicemail messages and security footage. Even if you do not think you would like to pursue a criminal case now, you can have evidence collected so you can decide later whether filing a report with police is right for you.

**Do NOT shower,** bath, brush your teeth, and if at all possible, avoid using the restroom prior to having a medical exam. This can allow important evidence to be collected. Place all clothing worn at the time of the assault in a paper, not plastic, bag to preserve any evidence present on the items. Do not apply medication to any injuries unless absolutely necessary.

#### B. Helping a Person Who Has Experienced Sexual Assault, Sexual Violence, Stalking or Intimate Partner Violence

Remain calm and go to a safe place.

Help the individual seek medical treatment as soon as possible.

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Help the individual preserve all physical evidence.

Contact someone you trust to get help and support.

Listen and let the individual talk.

Reassure the individual that the sexual assault is not their fault.

Assure the individual that there is help available.

### **C. How to Report Incidents of Sexual Assault, Sexual Violence, Stalking or Intimate Partner Violence to the Local Authorities**

The College encourages full reporting of incidents of sexual violence as well as the full use of all available campus and off-campus resources. The College also recognizes that someone who believes that they have experienced sexual violence has the right in most circumstances to decide whether to report the incident to College authorities and/or law enforcement and to decide what campus or community resources to use. The College cooperates with all investigative agencies. The College will do its best to comply with the wishes of an individual who believes that they have experienced sexual violence.

*Who do I talk with about reporting a sexual assault and/or incident of sexual violence to a local law enforcement agency?*

- The **Wellness Center** (410-857-2243) counseling staff members are available for students and will provide information, discuss the process, and help assess which resource would be best for you. This is a confidential resource.
- The **Department of Campus Safety** (Phone: 410-857-2202; Text: 443-821-1272) can provide information about this Policy and connect individuals to external law enforcement agencies and resources. It is important to note that this initial contact will start an internal investigation at the College.
- The **Rape Crisis Intervention Service of Carroll County** (410-857-7322) is a valuable off campus resource to discuss the process involved in making a report. Rape Crisis Staff will provide support throughout the total process of reporting an incident of sexual violence to a local law enforcement agency.
- An individual can report directly to the **Westminster Police Department** (410-848-4646), **Maryland State Police** (410-386-3000), **Carroll County Sheriff's Office** (410-386-2900) or go to **Carroll Hospital Center** (410-848-3000). Carroll Hospital Center procedures require that all incidents of sexual

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violence be reported to the Westminster Police, unless an individual wishes to have a SAFE Exam anonymously as “Jane/John Doe”.

- An individual can file for a Peace Order or Protective Order with the District Court of Maryland for Carroll County to prevent contact with the person(s) alleged to have engaged in a crime. The Department of Campus Safety staff is available to assist in this process. For more information on the process, you can visit the Maryland Court website at <https://www.courts.state.md.us/legalhelp/domesticviolence>

#### IV. Reporting Policy Violations to the College

##### A. How to Report Incidents of Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence to the College

Anyone who believes that they have experienced an incident of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking may initiate an investigation by reporting the incident to as follows:

STUDENTS	EMPLOYEES OR THIRD PARTIES
Department of Campus Safety (Phone: 410-857-2202; Text: 443-821-1272)	Department of Campus Safety (Phone: 410-857-2202; Text: 443-821-1272)
Any member of Campus Life (410-857-2244)	Any member of the Human Resources Department (410-857-2229)
Any Dean, Provost or Associate Dean	Any Dean, Provost or Associate Dean
Any Vice President	Any Vice President
Title IX Coordinator (410-857-2205)	Title IX Coordinator (410-857-2205)

Each individual listed above shall be informed about the responsibilities and details of these grievance procedures by the Title IX Coordinator upon appointment to their position.

- **Please note that if a person makes a report to a responsible person, federal law requires that the information be reported to the Dean of Students (410-857-2244) or the Title IX Coordinator (410-857-2205).** Reports include the name of the individual who allegedly experienced an incident of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking, the residence hall assignment of that individual (if applicable), the date, time, and location of the incident, and the name(s) of the accused individual(s), if known.

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- With limited exceptions, **professional counselors are exempt** from reporting regarding incidents of incident of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, and interpersonal violence or stalking. A professional counselor is defined as an individual whose official responsibilities include providing mental health counseling to members of the College's community and who is functioning within the scope of the counselor's license or certification. **Students** can access this type of professional counselor through the Wellness Center. The Wellness Center Counseling staff members will assist a student through the reporting process if the student so chooses. A student can make contact with a Wellness Center Counselor through the Department of Campus Safety if a report has been made or by contacting the Wellness Center directly and scheduling an appointment. **Employees** can access a professional counselor through the Employee Assistance Program (EAP) at 800-327-2251. The EAP Counselor can assist the employee through the reporting process should the employee choose to do so.
- Anyone who has experienced a violation may utilize Campus Safety to be escorted on and off campus if feeling unsafe.

Anyone in the College community who is approached by someone claiming to have experienced an incident of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking is encouraged to direct or accompany the complainants to meet with one of the individuals listed above or to make a report themselves. Any reports of an incident of discrimination or harassment related to this Policy on or before August 1, 2019 will be resolved using the previous policy in effect at the time of the allegation.

## **B. How to Report Incidents of Discrimination or Harassment that Are Not Based on Gender to the College**

Allegations of discrimination or harassment that are believed to be on the basis of race, color, religion, national origin, age, disability or genetic information against a College employee will be investigated and resolved using the College's EEOC/Non-Discrimination Policy. Allegations of discrimination or harassment that are believed to be on the basis of race, color, religion, national origin, age, disability or genetic information against a student will be investigated and resolved using the Student Conduct Process. For students, employees and third parties, if allegations of discrimination or harassment include multiple grounds, at least one of which is based on gender or pregnancy, this policy will be used to resolve the grievance.

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## V. Interim Measures during an Investigation and Resolution of a Violation

Once an incident has been reported to the College, there will be consideration regarding the implementation of any interim and/or protective measures during the course of and resolution of any alleged violation of policy. Each incident will be considered based on the needs of the individual seeking remedial and/or protective measures, the severity or pervasiveness of the alleged violation of policy, any continuing effects on the complainant, the opportunities for continued interaction between the complainant and the respondent (sharing or crossing paths during use of residential, academic, dining, office or any other facilities on campus) and the needs of the individual reporting the incident.

**For Students**, the following interim measures may be implemented to the extent that they are deemed reasonable, feasible, and necessary, based on the circumstances:

- Request a change, when possible, to campus housing assignment or the campus housing assignment of the respondent(s).
- Request a change, when possible, to class schedule(s)
- Request a no contact order with the respondent(s) and/or other involved parties.
- Request a restriction be placed on entrance into certain campus areas or buildings.
- Request escort services while on campus.
- Request academic support through the Academic Affairs Office.
- Request counseling services at the Wellness Center.
- Request a leave of absence through the Academic Affairs Office and Financial Aid Office (Note that a Leave of Absence may impact a student's eligibility to receive financial aid, to remain in the United States under a student visa, and/or to participate in intercollegiate athletics. Consult a member of the Academic Affairs Office and Financial Aid Office staff for additional information.)

To request an interim measure, a student may contact the Title IX Coordinator or Dean of Students.

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**For Employees**, the following interim measures may be implemented to the extent that they are deemed reasonable, feasible, and necessary, based on the circumstances:

- Request a change, when possible, to an office location(s) .
- Request a change, when possible, to the employee's supervisor.
- Request a no contact order with the respondent(s).
- Request escort services while on campus.
- Request a leave of absence from the College

To request an interim measure, a staff employee may contact the Title IX Coordinator and faculty may contact the Provost.

## **VI. Evaluating Requests for Confidentiality**

McDaniel College strives to respect the personal nature of incidents that may occur under this policy. If an individual, who allegedly experiences an incident of gender discrimination, requests confidentiality, that no investigation into a particular incident be conducted or any disciplinary action taken, McDaniel College will evaluate the request against its responsibility to provide a safe, non-discriminatory environment, including the individual who reported the incident. Although rare, there are times when McDaniel may not be able to honor the individual's request. Further, if McDaniel honors the request for confidentiality, McDaniel's ability to appropriately investigate the incident and pursue disciplinary action against the respondent(s), if warranted, may be limited.

McDaniel has designated the Title IX Coordinator, or any vice president or provost to evaluate requests for confidentiality, as appropriate to the circumstances. In considering an individual's request for confidentiality, those individuals may consult with other college personnel, as appropriate.

The evaluation of requests will be at the discretion of the Title IX Coordinator, vice presidents or provosts to weigh all factors. Factors may be considered in determining whether confidentiality should be maintained and include but are not limited to:

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- evidence, if any, of the increased risk that the respondent will commit gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking or other misconduct, such as:
  - whether there have been other reports or complaints of sexual misconduct about the same respondent
  - whether the respondent has a history of arrests or records indicating a history of engaging in gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking
  - whether the respondent threatened further misconduct against the Reporter or others
- whether the gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking was committed by multiple perpetrators
- whether the act was perpetrated with a weapon
- whether the victim is a minor (under the age of legal consent)
- whether the College possesses other means to obtain relevant evidence of the alleged gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking (e.g., security cameras or personnel, physical evidence)
- whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and/or
- whether there is any other evidence suggesting predatory behavior by the respondent(s)

The presence of one or more of these factors may prompt an investigation and adjudication under McDaniel's policies and, if appropriate, result in disciplinary action.

#### If Confidentiality is Requested but Cannot be Maintained

If McDaniel determines that it cannot maintain an individual's confidentiality after it has been requested, McDaniel will inform the individual prior to conducting an investigation (unless extenuating circumstances are present) and will, to the extent possible, only share information with those individuals who are responsible for McDaniel's response to the incident. McDaniel will not require the individual to participate in any investigation or disciplinary proceeding. The College reserves the right, in its sole discretion, to pursue an incident of sexual violence to its conclusion in cases where not pursuing the incident would constitute a danger to the College community.

If when responding to reports of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence or stalking, or related retaliation, McDaniel determines it is obligated to take any action that would involve disclosing a reporting individual's identity to the respondent, or an action from which the reporting individual's identity may be easily determined by the respondent, the individual will be informed before the action is taken unless extenuating circumstances are present. If

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the reporting individual requests that the respondent be informed that they requested that there be no investigation or disciplinary action, McDaniel will endeavor to honor this request and inform the respondent that McDaniel made the decision to investigate the matter.

When requested, reasonably available and necessary, McDaniel will take supportive measures that are designed to prevent and address retaliation against individuals whose requests for confidentiality have not been honored (see Section II. B. Retaliation.) and respond to their needs for support, services and accommodations (See Section I. Contacts and Resources and Section V. Interim Measures During an Investigation and Resolution of a Violation).

#### When Confidentiality Can Be Maintained

If McDaniel determines that it can respect the individual's request for confidentiality, McDaniel will take steps to assist the individual, to the extent possible, including the measures identified in Section V. Interim Measures During an Investigation and Resolution of a Violation.

As noted above, individuals should be aware that if McDaniel honors their request for confidentiality the College's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent may be severely compromised.

Actions by the police or criminal courts do not in any way prejudice the right of a person to bring a complaint using the College's disciplinary procedures described below.

## **VII. Grievance Procedures for Alleged Violations of the Policy Against Sexual Misconduct and Sexual and Gender-Based Harassment and Discrimination**

This Grievance Process provides complainants and respondents with the same fundamental fairness and parity of process as well as additional measures specifically tailored to the experience of both parties. The process will be prompt, fair and impartial from the investigation to the final result. Due to the sensitive nature of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence and stalking and with guidance from the U.S. Department of Education and the 2013 Reauthorized Violence Against Women Act, a separate resolution process different from the Honor and Conduct Board Process described in another Student Handbook section is afforded to the complainant and respondent in cases involving sexual misconduct that are referred to the Student Conduct Process.

### **A. Overview**

At the conclusion of the Initial Complaint Assessment (described below), the report will be referred for Remedies-based Resolution or further investigation to determine if there is sufficient information to proceed with Formal Resolution. Remedies-based Resolution is a

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remedies-based approach that does not involve disciplinary action against a respondent. Formal Resolution is a sanctions-based approach that may involve discipline up to and including expulsion for students and termination for employees.

Throughout the assessment and resolution processes, all parties will be kept informed of the status of the College's actions, as permissible based on the nature and circumstances of the report.

## **B. Initial Complaint Assessment**

Upon receipt of a report, the College will conduct an initial complaint assessment. The first step of the assessment will usually be a preliminary meeting with the complainant and a member(s) of the Response Team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be an in-depth interview. At this meeting, the complainant will be provided with information about resources, procedural options and interim measures.

For Students: The Response Team is comprised of the Title IX Coordinator, Dean of Student, Director of Residence Life, and Director of Campus Safety.

For Employees: The Response Team is comprised of the Title IX Coordinator and designated Vice Presidents.

As part of the initial assessment of the report, the Response Team will:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being needs
- Notify the complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence, if appropriate
- Enter the report into the College's daily crime log, if appropriate
- Assess the reported conduct for the need for a timely warning under the Clery Act, if appropriate.
- Provide the complainant with information about:
  - On and off campus resources
  - The range of interim accommodations and remedies
  - An explanation of the procedural options, including Remedies-Based Resolution and Formal Resolution
- Assess for pattern evidence or other similar conduct by respondent
- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding
- Explain the College's policy prohibiting retaliation
- Review the rights available to the complainant

This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may

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continue depending on a variety of factors, such as the complainant's wish to pursue a formal resolution or a remedies based resolution that includes the respondent, the institution's responsibility to maintain an environment free from behavior that may be perceived as discriminatory and/or harassing, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation (i.e. use of a weapon, multiple respondents, and/or egregiousness of behavior).

At the conclusion of the initial complaint assessment, the Response Team will determine if a formal investigation is warranted, taking into account the complainant's preference and, if appropriate, authorize the start of the investigation phase.

The determination as to how to proceed will be communicated to the complainant in writing. Depending on the circumstances and requested resolution, the respondent may or may not be notified of the initial complaint or resolution. A respondent will receive a notification letter when the College seeks action that impacts a respondent, such as interim measures that involve him/her directly, the initiation of an investigation, or the decision to involve the respondent in a remedies-based resolution or formal resolution. The respondent will also be notified of his/her rights throughout the process.

If the respondent will not be notified of the initial complaint; a full investigation may not be authorized by the Response Team.

### **C. Rights of Complainant and the Respondent**

The College has established rights for both the Complainant and the Respondent to provide accessible, prompt and fair methods for reporting, investigating, and responding to complaints of Prohibited Conduct. All individuals involved in the process have the right to be treated with dignity, respect, and sensitivity by College officials during all phases of the process. If the initial assessment leads to a formal investigation, the Complainant and the Respondent have the following rights established:

- To a fair and impartial investigation;
- To disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the alleged victim and the alleged violator to be heard;
- To be assisted throughout the disciplinary proceedings by a licensed attorney, an advocate supervised by an attorney or a trained advocate, as more fully described in Section D below;
- To be accompanied throughout the disciplinary proceeding by a personal supporter of the Complainant or Respondent's choice at any hearing, meeting, or interview;
- To be notified of legal service organizations and referral services available to the Complainant or Respondent;

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- To participate or decline to participate in the process, with the knowledge and understanding that the College may proceed with the process, despite a decision to refrain from participating;
- Timely written notice of:
  - The reported violation(s) including the date, time, and location of the alleged violation(s), and the range of potential sanctions associated with the alleged violation(s);
  - The Parties' rights and responsibilities under the Policy and information regarding other civil and criminal options;
  - The date, time, and location of each hearing, meeting, or interview the party is required or permitted to attend.
  - Any decision, resolution and/or outcome, including the basis for the determination and any sanction imposed, if applicable, at the same time as the other party;
- To have an equal opportunity to testify, present relevant witnesses, suggest specific questions, and submit evidence throughout the investigative and adjudicative process;
- To have similar and timely access to the case file and other information relative to the incident to be used during the process;
- To review and provide written responses to reports; and
- To the right of appeal through the final review process and a description of the appeal process.

#### **D. Attorney/Advocate and Support Persons**

A Complainant and Respondent have the right to be assisted by up to two advisors of their choice throughout the process. This includes the right to be assisted throughout the disciplinary proceedings by a licensed attorney, an advocate supervised by an attorney or a trained advocate; and the right to be accompanied by a personal supporter ("support person") of the Complainant or Respondent's choice.

A Complainant and Respondent have the right to have their attorney/advocate and their support person in attendance at any hearing, meeting, or interview. The attorney/advocate and/or support person may not be a witness or other party in the proceeding. The attorney/advocate and/or support persons have no speaking role in the process and are not permitted to ask or answer questions. The attorney/advocate and/or support person may only provide advice to the Complainant or Respondent in a non-disruptive manner. Individuals should select an attorney/advocate and support person whose schedule allows attendance at any scheduled meetings. Delays will not normally be allowed due to the scheduling conflicts of an attorney/advocate or support person. All communication regarding the process will be directed to the Complainant or Respondent. An attorney/advocate and/or support person will not be permitted to communicate on the Complainant or Respondent's behalf. An investigator or other McDaniel representative may

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terminate meetings and proceed with the investigation or process if the attorney/advocate or support person refuses to comply with these guidelines.

Complainants and Respondents are authorized to access counsel paid for by the Maryland Higher Education Commission, unless the Complainant or Respondent knowingly and voluntarily chooses not to have counsel. See Md. EDUCATION Code Ann. § 11-601. Complainants and Respondents are encouraged to contact the Maryland Higher Education Commission ([www.mhec.maryland.gov](http://www.mhec.maryland.gov)) or the state and local bar associations to exercise their right to counsel under Maryland law.

If a Complainant and/or a Respondent is not a student or former student and would like to consult with an attorney, they may do so at their own expense.

## **E. Investigation Process**

### **Overview**

Following the initial complaint assessment, the Response Team may initiate a prompt, thorough, and impartial investigation. The Title IX Coordinator, in consultation with the Response Team, will oversee the investigation. At the conclusion of the investigation, if warranted, the Title IX Coordinator (for complaints involving graduate students and/or employees) or the Dean of Student (for complaints involving students) will facilitate adjudication of the complaint. The Dean of Student may act as the designee of the Title IX Coordinator for complaints involving student respondents.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the parties, and any witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved as much as possible.

If it is necessary to investigate additional College policy violations that are a part of and related to the complaint, all possible policy violations are investigated through the process dictated by the policy.

McDaniel's investigation and formal resolution process does not permit the complainant and respondent to interact or communicate directly or indirectly with each other at any time.

### **Preliminary Meeting with the Parties**

The Title IX Coordinator or designee will contact the parties to schedule a meeting with each individual, if appropriate. At this meeting, the party will receive an explanation of the investigation and resolution process and have the opportunity to ask any questions. If the

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complainant/respondent have elected to have an advisor, s/he is encouraged to permit the advisor to accompany him/her to this initial meeting.

A No Contact Order, if appropriate, is normally issued to restrict contact and communication between the complainant and respondent for the duration of the investigation and formal resolution process. In particularly serious cases, temporary removal of the respondent from campus may be initiated by McDaniel College or any other interim measures outlined in V. Interim Measures During an Investigation and Resolution of Violations.

### **Investigation Protocol**

The Response Team will designate an investigator who has specific training and experience investigating allegations of gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence and stalking. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest. Based on the circumstances of a complaint, the College may designate two investigators to gather information. The College reserves the right to appoint an investigator or investigators from outside the College community where warranted by special circumstances, as determined by the Title IX Coordinator in consultation with appropriate College officials.

The investigator(s) will coordinate the gathering of information from any other individuals who may have information relevant to the complaint. Formal rules of evidence do not apply in the process described herein.

The complainant and respondent will have the option of identifying all relevant evidence that they would like the investigator to review, as well as witnesses that they would like the investigator to interview. Both parties may provide, if they wish, a list of questions that they would like the investigator to ask of particular individuals. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate.

The investigation will be completed as soon as reasonable possible to conduct a thorough and objective result. Given the availability of witnesses or complexity of the circumstances, this period may be extended as necessary to ensure the integrity and completeness of the investigation. The College will keep all parties informed of the progress of the investigation.

The College reserves the right to discontinue an investigation at any time. The complainant may request that an investigation be discontinued at any time. The College will attempt to honor the wishes of the complainant. However, to address incidents where compelling evidence suggests significant individual or community safety concerns, the decision to discontinue an investigation is within the sole discretion of McDaniel. Please see Section IV for a review of the factors to be considered in pursuing an investigation.

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In cases where the respondent is a student, if the investigator or Response Team becomes aware, at any point prior to or during the investigation and adjudication process, of additional allegations against the respondent that, if proven, could constitute violations of other College Policies, these allegations may be investigated and adjudicated in accordance with the procedures set forth herein. The decision to investigate and adjudicate other alleged policy violations is within the sole discretion of the Title IX Coordinator.

In all cases, the parties will receive written notification if the investigator determines that additional possible policy violations will be investigated and adjudicated in accordance with the procedures set forth herein.

### **Prior Sexual History**

If applicable, generally, complainant's prior sexual history is not relevant and will not be admitted as evidence in the resolution process. Where there is a current or ongoing relationship between the parties, and the respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the complainant with other individuals is typically not relevant and will not be permitted.

A party's sexual history with anyone other than the complainant or respondent may be relevant only under very limited circumstances to prove motive, prior sexual misconduct, assess credibility if a party has put their own prior sexual conduct at issue, or to explain an injury or physical finding.

### **Mental Health**

A party's history of mental health, counseling, treatment, or diagnosis will not be considered or documented in the investigative report, unless the party consents.

### **Pattern Evidence by a Respondent**

Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake and documented in the investigative report. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Title IX Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. The Title IX Coordinator or designee in

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conjunction with the Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

### **Cooperation with Investigation**

All participants in the investigation are expected to cooperate fully by providing complete, accurate, and truthful information. They may also be expected to sign statements or other documents citing the information they provided.

Any individual who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a decision panel meeting. Individuals may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person. Any individual scheduled to participate in a panel meeting must have been interviewed first by investigators.

Should an individual who has been notified of an investigation/adjudication fail 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.

### **Cooperation with Law Enforcement Investigation**

At the request of law enforcement, the College may agree to defer its fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the complainant regarding rights, procedural options and the implementation of interim measures outlined in this policy to assure safety and well-being. The College will promptly resume its fact gathering as soon as law enforcement has completed its initial investigation.

### **Investigative Report**

At the conclusion of the investigation, the Title IX Coordinator or designee will review the investigative report, any witness statements, and any other documentary evidence to determine whether the information contained therein is relevant and material to the determination of a finding given the nature of the allegation. In general, the Title IX Coordinator or designee may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Title IX Coordinator or designee may redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty. The report and materials may be redacted when necessary to protect privileged or confidential information, to protect the safety or well-being of individuals involved in the investigation, or to comply with the provisions of the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Privacy Act (HIPAA) or any other applicable state and federal regulation. The investigation report may not be duplicated, photographed, scanned, or copied by any party.

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The parties may then review the investigation report and information gathered, including witness statements and other relevant materials. Both will have an opportunity to respond in writing to this information within a determined five calendar day period of time. Documents will be made available for review to both parties in the Office of Human Resources or in a designated campus location.

If at any stage following the submission of the parties' investigation responses new relevant evidence is gathered, it will be shared with the parties, who will have an opportunity to submit an additional written response within a time frame determined by the Title IX Coordinator or designee.

The parties may request to review the other party's written investigative response statements once they have been submitted.

At the conclusion of the investigation, the Response Team will determine the appropriate manner of resolution, taking into account the complainant's preference and, if appropriate, authorize the start of the Formal Resolution or Remedies-based Resolution. The Title IX Coordinator or Designee will notify both parties of the resolution that will be pursued.

### **C. Resolution Options**

Once the investigation report is finalized, a designated member of the Response Team will meet with both parties to discuss resolution options. The options are as follows:

#### **Remedies-Based Resolution**

The remedies-based resolution option is designed to eliminate a hostile environment without taking disciplinary action against a respondent.

When the Response Team concludes that remedies-based resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the complainant's access to the educational and co-curricular activities at the College and to eliminate a hostile environment.

Examples of interim measures are provided in Section V: Interim Measures During an Investigation and Resolution of a Violation. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of remedies-based resolution used, it may be possible to maintain anonymity for the complainant.

The College will not compel a complainant to engage in mediation, to directly confront the respondent, or to participate in any particular form of remedies-based resolution. The

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decision to pursue remedies-based resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in remedies-based resolution is voluntary, and either party can request to discontinue the remedies-based resolution mediation process at any time. Once a resolution is mutually agreed upon, the complaint will be deemed resolved.

The Title IX Coordinator will maintain records of all reports and conduct referred for remedies-based resolution. The College will keep the complainant informed of the progress of Remedies-based Resolution procedures.

## **Formal Resolution**

The formal resolution option is hearing process designed to eliminate a hostile environment that may result in disciplinary action against a respondent where applicable. A Decision Panel is assigned by the Title IX Coordinator or designee to make a determination of a policy violation based on the relevant facts derived from the completed investigation report and the interviews conducted during the panel meetings. The Response Team will authorize the formal resolution process.

## **Consolidated Cases**

The Title IX Coordinator or designee may consolidate multiple cases and/or incidents to resolve as a single case through the formal resolution process under the following circumstances:

- The respondent is alleged to have been involved in multiple incidents of sexual misconduct with the same complainant;
- The respondent is alleged to have been involved in incident(s) of sexual misconduct with multiple reporting parties;
- More than one respondent is alleged to have been involved in incident(s) of sexual misconduct with the same complainant.

## **Decision Panel**

Each decision panel consists of two members drawn from a pool of trained faculty and staff. The role of the respondent dictates which pool the panel members will be selected from.

If the respondent is a student, the Decision Panel members may be selected from those elected to serve on the Honor and Conduct Board or any of the individuals listed below.

If the respondent is a tenure or tenure track faculty member, the Decision Panel may be selected from the following group:

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- Those faculty members who have been elected by their peers to serve on the Faculty Inclusion and Diversity Committee
- Deans or Associate Deans with faculty and tenure status

If the respondent is a staff or non-tenure track faculty member, the Decision Panel may be selected from the following group:

- Deans or Associate Deans with, or without faculty status and with or without tenure
- Chair of the Staff Advisory Board

All decision panel members must participate in annual training on non-discrimination; the dynamics of sexual harassment, sexual violence, stalking, and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The Title IX Coordinator or designee in conjunction with campus and external partners will coordinate the training.

### **Decision Panel Notifications**

The Decision Panel members will review the investigative report and invite the complainant and respondent to meet individually with the panel on the designated day and time. The parties will be notified of the time and place of the Decision Panel meeting at least 5 calendar days prior to the date. They will also be informed of the two chosen Decision Panel members.

The parties will be allowed to object to a particular member who has been assigned to serve on the panel. All objections must be made in writing and delivered to the Title IX Coordinator or designee within 24-hours of receiving notification of the names of the panel members. The complainant or respondent should explain the conflict of interest. The Title IX Coordinator or designee will respond to the objection in writing within 48 hours with a decision, and if necessary, include the name of the new panel member assigned to replace the removed member.

The Title IX Coordinator or designee will provide access to the Investigation Report for the Decision Panel and parties at least three business days prior to the Panel meetings.

*Note: Complainants and/or Respondents are not permitted to review the Investigative Report with any individual(s) other than their advisors.*

Both parties have the ability to submit witness lists, evidence and written questions in advance for the decision panel to ask of the other parties (including investigator and/or

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witnesses). Any individuals included on the witness list must have been interviewed by the investigator. The Title IX Coordinator or designee will inform both parties the timeframe to submit this information. The Decision Panel reserves the right to determine the appropriateness and relevance of the questions.

### **Decision Panel Meeting**

The Title IX Coordinator or designee will serve as the hearing administrator. In the event of technical difficulties, the hearing administrator will make appropriate accommodations to ensure a prompt, thorough, and equitable hearing.

Both parties will have an opportunity to provide direct testimony to the Decision Panel in person or through a conference call or other meeting technology. The order of the interviews during the hearing will be determined by the Decision Panel. Each party may have up to (2) advisors of their choice present during the meeting.

The complainant and respondent may not be present in the meeting room during any individual meetings except their own. However, they may listen to the other interviews from a different room at the time that they are occurring through conference calls or other meeting technology.

The Decision Panel will rely on the Investigation Report, evidence and the interviews conducted during the panel meetings for its determination of the relevant facts of the case.

At the discretion of the Title IX Coordinator or designee anyone disrupting the process may be removed from a meeting.

### **Witnesses**

At its discretion, the Decision Panel may choose to meet individually with the investigators and/or witnesses, and may review any statements or other evidence that is mentioned in the report. Both parties may request that the Decision Panel Members meet individually with any witness who was previously interviewed during the investigative process.

### **Deliberation**

After all of the information has been reviewed; the panel members will deliberate in private and render a decision within two (2) business days of the final panel meeting. The Title IX Coordinator or designee will remain for deliberations, but may not participate in the deliberations and may not vote.

The decision panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that they will decide whether it is "more likely than not," based upon all of the relevant information, that the Respondent is responsible or not responsible for

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the alleged violation(s). Only the decision on responsibility will be shared with the parties, not the content of the deliberation discussion.

If the board finds the Respondent responsible, the board will then determine appropriate sanctions.

- a. Determination of Sanctions
- b. The classification of the respondent will determine the procedure and type of sanctions available.

The decision panel will determine sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history (including any previous violations of the College's Policy on Gender/Sex Based Anti-Harassment/Non-Discrimination Policy); (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his/her actions; and (7) any other mitigating or aggravating circumstances. Alcohol and drug use are not considered mitigating circumstances.

For Students: If a student is found responsible, the Decision Panel will determine appropriate sanctions that may include those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed.

Sanctions for the policy violation for sexual assault act of rape or sexual violence act of rape may receive a sanction ranging from suspension to expulsion.

Sanctions that may be imposed under this policy for acts of intimate partner violence, sexual violence, stalking, coercion, gender-based discrimination, gender-based harassment, gender bias, creating a hostile environment, intimidation, retaliation, sexual exploitation and sexual harassment include:•

A disciplinary warning, mandatory attendance at an educational program on sexual harassment or sexual assault, mandatory referral for psychological assessment and compliance with any resulting treatment plan, change in room assignment, restriction of activities and/or on access of campus facilities, disciplinary probation, removal from the residence halls and/or from nonacademic campus activities, modifications to future class scheduling

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that do not impact graduation date, suspension or expulsion from the college and revocation of a degree.

For staff and non-tenure track faculty: If a staff member or a non-tenure track faculty member, is found responsible, the Decision Panel will determine appropriate sanctions that may include those set forth below in conjunction with the direct supervisor and/or appropriate divisional vice president. Sanctions may be issued individually, or a combination of sanctions may be imposed.

The minimum sanction for acts including the use of force, intimate partner violence, sexual assault, sexual violence, stalking is dismissal.

Sanctions that may be imposed under this policy for acts of coercion, gender-based discrimination, gender-based harassment, gender bias, creating a hostile environment, intimidation, retaliation, sexual exploitation and sexual harassment include:

A first written warning, a second warning, probation, suspension or dismissal, according to the seriousness of the offense. Sanctions may be incremental in nature (*i.e.*, a first offense generally would have the least severe sanction). Information regarding the respondent's employment record, including prior sanctions for violations, may be considered.

For tenured or tenure track faculty: If a tenured or tenure track faculty member is found responsible, the Grievance Committee will consult with the Provost before determining the recommended sanction(s). If the respondent is a faculty member, his/her tenure status is not a protection, since gender-based discrimination, gender-based harassment, sexual harassment, sexual violence, interpersonal violence and stalking violate basic human rights guaranteed by law, and tenure is not a guarantee against sanction due to either established academic principles or civil or criminal laws.

The minimum sanction for acts including the use of force, intimate partner violence, sexual assault, sexual violence, stalking is dismissal.

Sanctions that may be imposed under this policy for acts of coercion, gender-based discrimination, gender-based harassment, gender bias, creating a hostile environment, intimidation, retaliation, sexual exploitation and sexual harassment include:

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A first written warning, a second written warning, probation, suspension or dismissal, according to the seriousness of the offense. Sanctions may be incremental in nature (*i.e.*, a first offense generally would have the least severe sanction). Information regarding the respondent's employment record, including prior sanctions for violations of sexual misconduct, may be considered.

If the respondent is a tenured or a tenure track faculty member and the sanction recommended for the respondent is dismissal, the dismissal proceedings set forth in the American Association of University Professors (AAUP) 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings will be followed after the Appeals process in the previous section is satisfied. The first step of the AAUP process will be considered satisfied through the completion of the Formal Resolution Process.

Upon receipt of the sanction recommendation, the President will initiate the second step of the AAUP process by drafting a statement with reasonable particularity of the grounds proposed for dismissal and provide the statement to the elected faculty committee charged with review of personnel actions pertaining to tenured or tenure track faculty members (hereafter "the Hearing Committee").

The Hearing Committee will be charged by the President with reviewing the record of the formal hearing, and issuing a finding that supports a sanction of dismissal or offers an alternative of sanction. If the Hearing Committee requires additional information in order to render its findings, it will conduct proceedings in accordance with AAUP Guidelines, subject to and consistent with the requirements of Title IX. Specifically, the Committee may not request additional testimony from the complainant and witnesses who testified before the Grievance Committee. The complainant and witnesses' statements shall not be disclosed to the respondent in cases of discrimination, harassment and sexual assault and/or sexual violence. The Committee's deliberations will not be recorded.

At the conclusion of its review, the Committee will submit a written notice to the President regarding whether the faculty respondent should be dismissed. A copy will be provided to the Title IX Coordinator who will provide the written notice to the faculty respondent within three business of receipt of notice.

The President will transmit the Committee's written notice to the Board of Trustees Executive Compensation Committee ("BTECC"). The BTECC, in its

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sole discretion, may review the record of the hearings before the Grievance Committee, review the details and recommendations of the Committee's review, or grant the faculty member an opportunity for argument, oral or written. The BTECC shall make the final decision as to whether to dismiss the faculty member or to recommend an alternative course of action. The BTECC will charge the President with carrying out its recommended action(s), which shall not be subject to further review or appeal.

For Divisional Vice President, the Director of Human Resources, or Title IX Coordinator: If a Divisional Vice President, the Director of Human Resources, or the Title IX Coordinator is found responsible, the Grievance Committee will consult with the President before determining the recommended sanction(s). The sanctions available include: a verbal warning, written warning, probation, suspension or dismissal, according to the seriousness of the offense. Sanctions may be incremental in nature (*i.e.*, a first offense generally would have the least severe sanction). Information regarding the respondent's employment record, including prior sanctions for violations, may be considered.

For Board of Trustee Members: If a Member of the Board of Trustees is found responsible, the Grievance Committee will consult with the Chair of the Board of Trustees before determining the recommended sanction.

For the President: If the President is found responsible, the Grievance Committee will consult with the Chair of the Board of Trustees before determining the recommended sanction(s).

#### c. Outcome Letter

The findings of the decision panel will be reduced to writing. The findings will detail the findings of fact and the basis/rationale for the decision of the panel, making reference to the evidence that led to the finding.

The decision panel findings will be final and communicated to the parties in writing within two business days from the date the panel concluded the individual meetings. The notification of each party should occur at or near the same time.

Both parties have the right to be informed of the outcome, the final review procedures, any change to the outcome that occurs as a result of the final review process, and when the outcome becomes final. In addition, the Respondent will be fully informed of any sanctions. For reports involving

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sexual violence, the complainant will be fully informed of any sanctions. For all other reports under this policy, the complainant will be informed of only those sanctions that directly relate to him/her, consistent with FERPA and other applicable law.

### **Audio Recording**

A single audio recording shall be made of the meetings. The recording shall be the property of the College. No other recordings shall be made by any person during the meetings. Deliberations will not be recorded. The recordings are for use of the Decision Panel and Final Review panel members to aid in the decision making process. Recordings of meetings that result in suspension, dismissal of employment, expulsion, or loss of campus housing shall be kept in accordance with the records retention policy. All other recordings will be destroyed following the end of the appeal period.

### **Final Review Process**

Both parties may request that the final outcome be reviewed. The review will be conducted in an impartial manner by a two-person panel comprised of two Vice Presidents or designee appointed by the Title IX Coordinator.

The review must be submitted via email to the Title IX Coordinator or designee within three business days of receiving the written outcome. The review shall consist of a concise and complete written statement stating the grounds for the review (see below) and all relevant information to substantiate the basis for the appeal.

The review request must state whether the individual is appealing the sanction, or both the sanction and the decision. Dissatisfaction with the outcome of the decision panel is not grounds for appeal. The only grounds for final review are:

- The College significantly deviated from its stated procedures in such a way that materially affected the fairness of the hearing. Minor deviations from designated procedures will not form the basis for sustaining an appeal.
- The sanction(s) imposed is substantially disproportionate to the severity of the violation.
- Substantive new information that was not reasonably available at the time of the investigation has now become available and could considerably affect the outcome.

The receipt of the request for final review will be acknowledged in writing (which can include email).

The Title IX Coordinator or designee shall first consider whether the review request is timely filed and if so, whether the review request is properly framed based on one or more

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of the three grounds. If the Title IX Coordinator or designee determines that the review request is not properly framed, the final review will be denied.

If the review request meets the final review criteria, any documents from each party will be considered together in one appeal review process. The review request and any supporting documents will be shared with the other party, who will be given three business days to respond to the review documentation in writing to the Title IX Coordinator or designee.

The burden of proof lies with the party requesting the final review, as the original determination and sanction are presumed to have been reasonable and appropriate.

Final reviews are not intended to be full rehearing of the complaint. In most cases, final reviews are confined to a review of the written documentation and pertinent documentation regarding the grounds for appeal.

The Final Review Panel will then issue a written decision that either:

- Accepts the decision of the decision panel,
- Amends the decision of the decision panel, or
- In the case of substantive new information, the Final Review Panel assesses the weight and impact of newly discovered information in light of the original decision and renders a decision.

If a party is suspended, dismissed, removed from campus, including housing, or put on leave as a result of the hearing, the assigned sanctions may go into effect pending the outcome of any appeal.

The Final Review Panel will render a written decision on the appeal to the parties within five business days from the date of the submission of all appeal documents by both parties. Final review decisions are absolute.

### **Limited Student Conduct Immunity for Reporting Parties and Witnesses**

Individuals with information about a sexual assault and/or incident of sexual violence may hesitate to come forward out of fear of revealing that their own conduct at the time of the sexual assault and/or incident of sexual violence violates the Code of Student Conduct.

Students are encouraged to report incidents of sexual assault and/or sexual violence and assist a person involved in a sexual assault and/or incident of sexual violence in times of crisis.

McDaniel College does not condone infractions of the Code of Student Conduct, but considers reporting incidents of sexual assault and/or sexual violence to be of paramount importance. Therefore, the College extends immunity for substance abuse violations to

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potential witnesses and complainants in order to facilitate the reporting and resolution of incidents of sexual assault and/or sexual violence.

Immunity is extended to a student under the following circumstances:

- The College determines that the substance abuse violation occurred during or near the time of the alleged sexual assault and/or sexual violence;
- The student is determined to have made the report or is participating in an investigation as a witness in good faith; and
- The College determines that the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

### **Integrity of Proceedings**

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio nor video record the proceedings, nor is formal legal representation allowed.

### **Records**

The Title IX Coordinator or designee will retain records of all reports and complaints, regardless of whether the matter is resolved by means of assessment, remedies-based resolution, or formal resolution.

If the complainant or respondent is a student, the records will be retained in the Office of Campus Life for seven years from when the student graduates or leaves the College due to death, withdrawal, or academic dismissal. Affirmative findings of responsibility in matters resolved through formal resolution will be included as part of the student's conduct record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record. Records of cases resulting in suspension or expulsion, or may be retained for longer periods of time or indefinitely at the discretion of the Dean of Students. Further questions about record retention should be directed to the Office of Campus Life.

Complaints resolved by means of assessment or remedies-based resolutions are not included in the student's conduct file or academic record.

If the complainant or respondent is a volunteer, faculty or staff member, the records will be retained in the Office of Human Resources in a confidential file for a period of seven years post termination.

If the complainant or respondent is a third party, the records will be retained in the Office of Human Resources in a confidential file for a period of seven years post resolution date.

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**E. Misuse of Policy**

The purpose of this policy is to promote and maintain an environment at McDaniel College that is free from sexual misconduct, interpersonal violence, and stalking. Any member of the college community who believes that he or she has been subjected to such behavior is encouraged to use the procedures provided in this policy, for the benefit and protection not only of that individual but ultimately of the entire college community. However, fabricated charges of sexual misconduct undermine the purpose and effectiveness of this policy. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the individual may be subject to disciplinary action. It is a violation of the Code of Student Conduct, Faculty and Staff Handbook guidelines to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. Such allegations may be reported to the Title IX Coordinator, who shall investigate the allegations and take any appropriate action.

**VIII. To Request Accommodations**

If accommodations are needed at any time to report or participate in any part of the policy/process described within, please contact the Title IX Coordinator at 410-857-2205.

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