



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 sexual harassment, sexual assault, dating violence, domestic violence, stalking, gender-based discrimination, and gender-based harassment, in accordance with all applicable state and federal laws including Title IX, Title VII, 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 and other applicable laws are upheld.

Inquiries concerning the application of Title IX may be referred to the College’s Title IX Coordinator, Jennifer Kent at 410-857-2205 or via email to jkent@mcdaniel.edu 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. How to Report Incidents of Sexual and Gender-Based Misconduct and Discrimination and Other Forms of Interpersonal Violence to the College

A. Who to Contact at the College to Report a Violation of this Policy

This policy precludes various types of sexual and gender-based misconduct and other forms of interpersonal violence, including but not limited to sexual assault, sexual harassment, dating violence, gender-based discrimination and gender-based harassment. At times in this Policy, the term “Sexual Misconduct” is used to refer to these types of misconduct collectively.

Anyone who believes that they have experienced or witnessed an incident of any type of Sexual Misconduct may initiate an investigation by reporting the incident to one of the authorized Title IX Officers or a mandatory reporter listed below.

1. Title IX Officers

The following individuals are Title IX Officers who may institute corrective measures on behalf of the College. They are not confidential resources.

Title IX Coordinator: Jennifer Kent
Pronouns: She/her/hers
Phone: 410-857-2205,
Email: jkent@mcdaniel.edu,
Mailing address:
 McDaniel College
 Department of Human Resources
 2 College Hill, Westminster, MD 21157
Campus Office: Ground Floor of Thompson Hall.

The Title IX Coordinator oversees the implementation of this Policy. Reports can be made to her at any time -- including during non-business hours – in person, or by calling the listed telephone number (410-857-2205) or emailing her at her e-mail address (jkent@mcdaniel.edu), or via mail by writing to Title IX Coordinator, McDaniel College Department of Human Resources, 2 College Hill, Westminster, MD 21157 or by any other means that results in the Title IX Coordinator receiving your verbal or written report.

The Title IX Coordinator is available to meet with individuals to discuss the policy, the options for making a complaint, support services including interim measures, accessing medical attention, academic accommodations, confidential counseling resources, and any other questions related to McDaniel’s response to interpersonal violence.

Anyone in the College community who is approached by someone claiming to have experienced an incident of sexual or gender-based misconduct or other form of interpersonal violence is encouraged to direct or accompany that person to meet with the Title IX Coordinator or to make a report themselves.

Dean of Students: Elizabeth Towle
Pronouns: She/her/hers
Phone: 410-857-2241
Email: etowle@mcdaniel.edu,

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Mailing Address: McDaniel College, 2 College Hill, Westminster, MD 21157.

Although all complaints will be referred to the Title IX Coordinator, 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 support services and academic accommodations, confidential counseling resources, and any other questions related to McDaniel's response to interpersonal violence.

Associate Vice President for Administration: Jennifer Glennon
Pronouns: She/her/hers
Phone: 410-857-2403
Email: jglennon@mcdaniel.edu,
Mailing address:
 McDaniel College Department of Human Resources
 2 College Hill
 Westminster, MD 21157.

Although all complaints are referred to the Title IX Coordinator, the Associate Vice President of Administration is available to meet with individuals to discuss the policy, the options for making a complaint, accessing medical attention, determining appropriate support services and accommodations, confidential counseling resources, and any other questions related to McDaniel's response to interpersonal violence.

Executive Vice President/Provost: Dr. Julia Jasken
Phone: 410-857-2248
Email: jjasken@mcdaniel.edu,
Mailing address:
 McDaniel College
 2 College Hill
 Westminster, MD 21157.

Although all complaints are referred to the Title IX Coordinator, the Executive Vice President/Provost is available to meet with individuals to discuss the policy, the options for making a complaint, accessing medical attention, determining appropriate support services and accommodations, confidential counseling resources, and any other questions related to McDaniel's response to interpersonal violence.

2. Mandatory On-Campus Reporters

The following individuals are required to report any incident of sexual and gender-based misconduct and other forms of interpersonal violence to the Title IX Coordinator:

Department of Campus Safety (Phone: 410-857-2202; Text: 443-821-1272)
Any member of the Human Resources Department (410-857-2229)
Any Dean, Provost or Associate Dean

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Any Vice President

Additionally, any member of Campus Life (410-857-2244) is considered a mandatory reporter if a student reports an incident sexual or gender-based misconduct under this policy.

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 once a Mandatory Reporter is informed of an alleged incident that person is required to provide that information to 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.

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, genetic information or any other protected characteristic other than sex 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, genetic information or any other protected characteristic other than sex 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 Sexual Harassment as Defined by the Department of Education, this policy will be used to resolve the Sexual Harassment as Defined by the Department of Education grievance either after the other allegations have been resolved through the appropriate grievance process or concurrently therewith. This decision on how to proceed will be made jointly by the Title IX Coordinator in conjunction with the relevant senior level administrator or Board of Trustees Chair with ultimate supervisory authority over the Respondent.

II. College and External Confidential and Non-Confidential Resources for Incidents of Sexual Misconduct

A. On Campus Non-Confidential Emergency Resources

Department of Campus Safety

Phone: 410-857-2202;

Text: 443-821-1272

Address: 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: (i) help an individual access medical care and/or a SAFE exam through Carroll Hospital Center, including by providing transportation, (ii) discuss safety planning, and (iii) explain reporting

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options related to the College and local law enforcement, including applying for a peace order through the Carroll County Court System.

Anyone who has experienced an incident of Sexual Misconduct may utilize Campus Safety to be escorted on and off campus if feeling unsafe.

B. On Campus Confidential Resource for Full Time Students

McDaniel College Wellness Center
Campus Location: Winslow Center
Phone: 410-857-2243

The Wellness Center's licensed 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.

With limited exceptions, the professional counselors **are exempt from reporting regarding incidents of sexual and gender-based misconduct.** 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.

C. Confidential Resource for Employees

Employees can access a professional counselor through the Employee Assistance Program (EAP) at 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. 800-327-2251. The EAP Counselor can assist the employee through the reporting process should the employee choose to file a report.

D. 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

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 This is a free and confidential hotline available 24 hours a day/7 days a week.

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Maryland Coalition Against Sexual Assault (MCASA): 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 (24-hour hotline) 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 walk-in crisis intervention (Monday-Friday) Individual and group therapy; Hospital, court, school, detention center, and police accompaniments; Information and referrals.

III. Policy Statements and Definitions

A. Policy Statement: Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence are Strictly Prohibited.

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. Sexual and gender-based misconduct and other forms of interpersonal violence including sexual harassment, sexual assault, dating violence, domestic violence, stalking, gender-based discrimination, and gender-based harassment 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.

McDaniel College is committed to maintaining a safe and secure campus environment that is free from acts of violence, intimidation, and fear. Sexual and gender-based misconduct and other forms of interpersonal violence, whether committed by a stranger or by someone you know, threatens the personal safety, educational experience, and the well-being of members of the McDaniel College community. Alleged violations of this Policy that occur outside of the College's educational program or activity may be considered actionable under this Policy if it creates a hostile environment for the complainant or campus because of the continuing effects on the individual or the substantial impact on the institution. Alleged sexual misconduct that occurs in the campus vicinity, such as an at off-campus apartment, and where the parties are students, may also be actionable under this Policy. McDaniel College will not tolerate violence or assault of any kind, including sexual assault. If the College becomes aware of incidents of sexual and gender-based misconduct and other forms of interpersonal violence, the College will take prompt action to eliminate the discrimination, harassment, or violence, prevent its recurrence, and address its effects.

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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.

Incorporation of Regulations Issued by the Department of Education

On May 19, 2020, the Department of Education issued regulations that prescribe what is considered actionable sex-based harassment under Title IX of the Education Amendments of 1972. The Department of Education has set forth a unique definition of sexual harassment, which is what the Department considers actionable misconduct under Title IX. The Department also sets forth specific procedures that must be followed once the College has actual knowledge of a report of Title IX sexual harassment. As part of these procedures the Title IX Coordinator must evaluate a formal complaint to determine whether or not it falls under the Department of Education's definition of sexual harassment. If it does not, then the Title IX Coordinator must "dismiss" that complaint.

However, as the Department of Education itself notes, "Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students." Moreover, gender-based discrimination and harassment are also prohibited under Title VII of the Civil Rights Act of 1964 as well as Maryland state law. The College thus expressly lists other prohibited conduct in this Policy, which is generally barred under various College governance documents, including the College's Student Code of Conduct, the Faculty and Adjunct Faculty Handbooks, and Staff Handbook, which incorporate this Policy into those documents, and prohibit any type of sexual misconduct set forth herein. In such cases where the Title IX Coordinator must dismiss the case because they are required to do so under the Department of Education's regulations, the Title IX Coordinator will also evaluate the complaint to determine whether or not there is other misconduct that should be charged. That procedure is described in more detail in Section IX, "Evaluation of a Complaint for Jurisdiction."

All formal complaints will be investigated under the protocols set forth in this Policy, regardless of what charges are developed. The College will use the investigative procedures set forth in this Policy to respond to any reported incidents, regardless of the sex, gender identity and/or sexual orientation of the complainant or respondent.

For complaints that contain charges of misconduct that fall within the Department of Education's definition of Title IX sexual harassment, they will be adjudicated under the procedures set forth in Section XII ("Title IX Hearing") of this policy, even if alleged violations of other sexual misconduct are also charged. All other complaints will be transferred upon the conclusion of the investigation to be adjudicated under the relevant code of conduct procedure, based upon the nature of the conduct and the identities of the parties.

Any reports of an incident of gender-based discrimination, harassment, or other misconduct that allegedly occurred on or before August 14, 2020 will be heard if the allegations constitute an offense recognized under the policy in effect at the time of the allegation. If the allegations constitute a recognizable offense under that previous policy, the College shall retain the discretion to determine the forum where the allegations will be investigated and adjudicated and the applicable procedure.

1. Training and Prevention Programming.

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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.

B. Policy Definitions

1. Sexual Misconduct Defined

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

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.

“**Domestic Violence**” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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. This may encompass 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. Domestic or dating 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 domestic or dating 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 domestic or dating 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 dating or domestic violence.

Dating Violence The term “dating violence” means violence committed by a person—

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(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

This may encompass 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. Domestic or dating 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 domestic or dating 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 domestic or dating 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 dating or domestic violence.

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 unfavorable treatment of a person or group of people with respect to the terms or conditions of their education; educational program or activity; or employment, including, but not limited to, hiring, promotion, compensation practices, retention, grading, *etc.*, because of that person's gender. Gender-Based discrimination includes, but is not limited to, discrimination based on pregnancy, parental status, gender identity or failure to conform to stereotypical notions of masculinity or femininity. Alleged violations of an incident of Gender-Based Discrimination will be adjudicated under the Title IX Process, the Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent and the allegations.

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 that create an environment that would be intimidating, hostile, or offensive to a reasonable person even if those acts do not involve conduct of a sexual nature. Alleged violations of an incident of Gender-Based Harassment will be adjudicated under the Title IX Process, the Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent and the allegations.

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. Possible violations related to an incident of Intimidation will

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be adjudicated under the Title IX Process, the Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent and the allegations.

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, attempts to assert any right under this Policy, or participates in the investigation or resolution of a grievance. Acts of retaliation may include, but are not limited to, intimidation, threats, coercion, or discrimination secured by 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 with hostility, or causing physical or emotional harm.

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 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.

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- Knowingly assisting another person with committing an act of sexual misconduct.

Alleged violations of an incident of Sexual Exploitation will be adjudicated under the Title IX Process, the Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent and the allegations.

Sexual Harassment Prohibited by Title IX (as Defined by the Department of Education) includes:

- (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
- (2) Unwelcome conduct based on sex that a reasonable person would consider so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity
- (3) Sexual Assault, dating violence, domestic violence, and stalking.

In order to constitute Sexual Harassment Prohibited under Title IX, the alleged conduct must have occurred in the United States in an education program or activity of the College. An education program or activity of the College includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College. Any actionable misconduct that constitutes Sexual Harassment as Defined by the Department of Education that occurs outside of the United States or outside of an education program or activity of the College shall be referred to the relevant Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent. Such alleged violations will be considered actionable under this Policy if it creates a hostile environment for the complainant or campus because of the continuing effects on the individual or the substantial impact on the institution. Alleged sexual misconduct that occurs in the campus vicinity, such as an off-campus apartment, and where the parties are students, is also actionable under this Policy.

The term "**stalking**" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) fear for his or her safety or the safety of others; or
- (B) 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)

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gathering information about an individual from friends, family, or co-workers; and (6) accessing private information through unauthorized means.

Unwelcome Sexual Conduct 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 that is not defined as Sexual Harassment Prohibited by Title IX under this Policy. Unwelcome Sexual Conduct 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 physical characteristics, posters, pictures, or calendars with sexual overtones or content displayed in the work or academic environment, and sexual violence. Alleged violations of an incident of Unwelcome Sexual Conduct will be adjudicated under the Title IX Process, the Student Conduct Process, the Faculty Misconduct Process, or the Staff Misconduct Process depending on the role of the respondent and the allegations.

2. Other Definitions.

Actual knowledge means notice of Sexual Harassment as Defined by the Department of Education as defined by the Department of Education or allegations of Sexual Harassment as Defined by the Department of Education to the College's Title IX Coordinator or any of the other College's Title IX Officers. A mandatory reporter's training, ability, or obligation to report a violation under this Policy or to inform a student about how to report a violation under this Policy does not qualify an individual as a Title IX Officer (i.e., one who has authority to institute corrective measures on behalf of the College).

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 as defined by the Department of Education is an individual who is alleged to have been a victim of conduct that could constitute Sexual Harassment Prohibited by Title IX. Under this policy, the term Complainant also includes a person who allegedly experienced a violation of the McDaniel College Policy Against Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence.

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.

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- 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. See also Staff Handbook Adjunct Faculty Handbook at Section 4.4.20 (“Relationships with Students”); Faculty Handbook at Section 4.4.20 (same); and Staff Handbook at Section 18 (same).

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.

Evidence means something that tends to prove or disprove the existence of an alleged fact.

- **Exculpatory Evidence** means evidence tending to establish a person’s innocence.
- **Inculpatory Evidence** means evidence tending to show one’s involvement in an act of wrongdoing.
- **Evidence Directly Related to the Complaint’s Allegations** means:

Inculpatory or exculpatory evidence that has a direct (i.e., straightforward) connection to the allegations of the formal complaint. By way of example, directly related evidence includes evidence that is close in time to the allegations, involves the same parties actions or motives, or similar past conduct.

- **Relevant Evidence** refers to evidence that:
 - (a) has any tendency to make a fact more or less likely than it would be without the evidence; and
 - (b) the fact at issue is of consequence in determining the outcome of the formal complaint.

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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.

Formal Complaint or Complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging violations of this Policy against a respondent(s) and requesting that the College investigate the allegations therein. A formal complaint filed by a complainant is a document provided to the Title IX Coordinator by the Complainant that sets forth allegations of misconduct under this Policy and that requests that the College investigate the allegations. The formal complaint can be provided to the Title IX Coordinator in person, electronically, via U.S. mail, or submitted at or after the initial intake meeting.

Good Cause is defined as the unavailability of any party, witness, advisor, Title IX investigator, decisionmaker, Title IX Coordinator, or member of the response team because of death, illness, or other excusable conditions; unavailability or delay in speaking with or obtaining evidence from a party or witness because of death, illness, or other excusable conditions; technological failures or lack of access to technology; pandemics; natural disasters; government shutdowns; concurrent law enforcement activity; the need for language assistance or the accommodation of disabilities; a court order or other legal filing directing that the proceedings pause; or any other unexpected event that would substantially contribute to the delay of the proceeding.

Intake refers to when a complainant meets with the Title IX Coordinator to discuss supportive services available at the College and their rights under this Policy to file a formal complaint. Intake may occur in person or remotely. A complainant has a right to be accompanied by up to two advisors of their choice at an intake, at least one of whom may be an attorney.

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 with an ordinary degree of reason, prudence, care, foresight, or intelligence 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.

Mandatory Reporter 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.

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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.

Supportive Measures means 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 program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. For a complete list of Supportive Measures please go to page 22. The College shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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.

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

IV. What To Do If You Experience an Act of Sexual Misconduct, Including Sexual Assault

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 for medical attention or other intervention services can be arranged by the Department of Campus Safety (Phone: 410-857-2202; Text: 443-821-1272 or Ext. 2202) at any time, or by calling for an 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, bathe, 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

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evidence present on the items. Do not apply medication to any injuries unless absolutely necessary.

V. How to Help A Person Who Has Experienced How to Help a Person who has Experienced an act of Sexual Misconduct, Including Sexual Assault

- Reassure the person that the sexual assault or other event is not their fault.
- Ask the person if they want help in contacting any of the resources listed in Section II of this Policy.
- Remain calm and go to a safe place.
- Help the person seek medical treatment as soon as possible.
- Help the person preserve all physical evidence by following the practices set forth in the prior section.
- Contact someone you trust to get help and support.
- Let the person know that you are going to listen and let them talk; try not to interrupt until they are finished.
- Assure the person that there is help and support available; they are not alone and neither are you.

VI. How to Reports Incidents of Sexual Misconduct 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 may 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. **This is a free and confidential service.**

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- 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 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 by transporting you to the Courthouse and back. For more information on the process, you can visit the Maryland Court website at <https://www.courts.state.md.us/legalhelp/domesticviolence>

VII. Rights of Complainant and the Respondent under this Policy

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 under this policy. 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. Parties may have other rights at the adjudication stage, depending on where the alleged violations are ultimately adjudicated.

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;
- If the party chooses, to be assisted throughout the Title IX formal resolution process by an advisor, who may be a licensed attorney, an advocate supervised by an attorney or a trained advocate, as more fully described in Section XII below;
- If the party chooses, to be accompanied throughout these proceedings by a personal supporter of the Complainant or Respondent's choice at any meeting or interview that is governed by this Policy;
- To be notified of legal service organizations and referral services available to the Complainant or Respondent;
- To participate or decline to participate in any formal investigation or other part of the disciplinary process, with the knowledge and understanding that the College may proceed with a formal investigation, despite a decision to refrain from participating;
- Timely written notice of:
 - The alleged violation(s) including the date, time, and location of the alleged violation(s) and the parties involved in the incident;
 - 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;

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- 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 inspect and review an investigative report/evidence, testify, present relevant fact and expert witnesses and submit evidence throughout the investigative process;
- To investigations, disciplinary proceedings, and resolutions that are prompt and equitable and provide an opportunity for the alleged victim and the alleged violator to be heard.

VIII. Roles of an Advisor and Support Person

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 Title IX formal resolution process by a licensed attorney, an advocate supervised by an attorney or a trained advocate (an “advisor”); and the right to be accompanied by a personal supporter (“support person”) of the Complainant or Respondent’s choice.

If a Complainant and/or a Respondent would like to consult with an attorney, they may do so at their own expense. In certain instances, 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) or the state and local bar associations to exercise their right to counsel under Maryland law. More information, including a list of MHEC-certified attorneys, can be found here: <https://mhec.maryland.gov/Pages/Title-IX-Campus-Sexual-Assault-Proceedings---Attorney-List.aspx>

A Complainant and Respondent have the right to have their advisor and their support person in attendance at any hearing, meeting, or interview that is governed by this Policy. With limited exceptions during the Title IX hearing, as detailed in Section XII of this Policy, the advisor and/or support persons have no speaking role in the process and are not permitted to ask or answer questions.

The advisor and/or support person are expected to act professionally and with decorum to all actors in this process, including other parties and witnesses. They may only provide advice to the Complainant or Respondent in a non-disruptive manner. Individuals should select an advisor and support person whose schedule allows attendance at any scheduled meetings. Delays will not normally be allowed due to the scheduling conflicts of an advisor or support person. The College will direct all communication regarding the process to the Complainant or Respondent. An advisor and/or support person will not be permitted to communicate with the College on the Complainant or Respondent’s behalf. Failure to comply with any of these directives may result in the removal of any advisor or support person from any meeting or other proceeding. Additionally, failure to comply with any of these directives may result in an investigator or other McDaniel representative terminating any meeting and proceeding with the investigation or process.

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IX. Intake Procedure by the College upon a Report of Sexual Misconduct.

A. Initial Report Assessment

Upon receipt of a report of misconduct under this policy, the College will conduct an initial report assessment. As part of the initial intake 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 their 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 supportive measures and available remedies under this Policy
 - An explanation of the procedural options that may be applicable, including the Remedies-Based Resolution and the appropriate 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. 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 supportive measures that involve them directly, the initiation of an investigation, or the decision to request that the Respondent participate in a remedies-based resolution or formal resolution. The Respondent will also be notified of their rights throughout the process.

1. Report Intake Meeting

Unless circumstances dictate otherwise (e.g., the Complainant is unknown or not the reporting party), the first step of the assessment will usually be a preliminary intake meeting with the complainant and/or a member(s) of the appropriate Response Team.

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- For Students: The Response Team is comprised of the Title IX Coordinator, Dean of Students, Title IX Investigator, and Director of Campus Safety.
- For Employees: The Response Team is comprised of the Title IX Coordinator, the Director of HR, and designated Vice Presidents.

The purpose of the preliminary intake meeting is to gain a basic understanding of the nature and circumstances of the report and any need for supportive measures; it is not intended to be an in-depth interview.

At this meeting, the Complainant will be provided with information about resources, procedural options, including the option to authorize the filing of a Formal Complaint, and supportive measures. Failure to authorize a Formal Complaint in instances where the Respondent is an Employee or Volunteer of the College shall not prevent the College from taking investigative action on the report.

1. Procedural Options:

- If the report contains allegations that may constitute Sexual Harassment Prohibited by Title IX, Sexual Assault; Domestic Violence; Dating Violence; Sexual Assault; or Stalking (collectively, “First Level Offenses”) and a formal complaint is filed, then the Title IX formal resolution process outlined in Sections X and XII of this policy shall be followed.
- If the report contains solely allegations that may constitute conduct that is prohibited by this Policy other than a First Level Offense, and a formal complaint is filed, then the allegations shall be investigated using the procedures set forth in Section X of this policy, but adjudicated by the relevant conduct board in accordance with the procedures of that body.
- If both parties are students, then any party is entitled to invoke the remedies-based resolution process set forth at page 29 of this policy at any time, including prior to the investigation of a formal complaint.

2. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Once an incident has been reported to the College, supportive measures will be offered to the complainant during the intake process by the Title IX Coordinator. Supportive measures will also be offered to the respondent once a formal complaint is filed or when it is otherwise appropriate.

Supportive measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter further misconduct. Supportive measures are available regardless of the forum where the alleged policy violation is finally adjudicated.

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The College will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.

McDaniel will also offer and implement supportive measures that are designed to prevent and address retaliation against individuals whose requests for confidentiality have not been honored (see Section III. B. Retaliation.) and respond to their needs for support, services and accommodations (See Sections I. and II. Contacts and Resources.).

The appropriate supportive measures will be determined by considering the party's request(s) and the following factors, as applicable:

1. The needs of the individual seeking supportive measures;
2. The impact of the supportive measures on the ability of others to access the educational program or activity;
3. 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**
4. Any other factor determined to be relevant to the health or safety of either party or the campus community as a whole.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures may be temporary or continuing.

For Students, the following supportive measures may be implemented to the extent that they are deemed reasonable, feasible, and necessary, based on the factors set forth above:

- Change to campus housing assignment.
- Change to class schedule(s).
- Restrictions on contact between the parties, e.g., a no contact order.
- Restrictions on entrance into certain campus areas or buildings.
- Escort services while on campus.
- Academic support through the Academic Affairs Office.
- Counseling services at the Wellness Center.
- Course-related adjustments (e.g. schedule change, deadline extension, etc.).
- Modification of work schedule or location of a campus job.
- 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.

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Consult a member of the Academic Affairs Office and Financial Aid Office staff for additional information.)

- Increased monitoring and/or security of certain areas of the campus.

To request a supportive measure, a student should contact the Title IX Coordinator or Dean of Students who will work with the Title IX Coordinator and their designees to determine whether or not to grant the request.

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

- Restrictions on contact between the parties, e.g. a no contact order;
- Increased security and monitoring of certain areas of the campus;
- Escort services while on campus;
- A leave of absence from the College;
- Counseling through the EAP;
- Modifications of work or class schedules, locations, and reporting lines;
- Other similar measures designed to protect the health or safety of a party or the campus community.

To request a supportive measure, a staff member or volunteer may contact the Title IX Coordinator and faculty may contact the Provost who will work with the Title IX Coordinator and their designees to determine whether or not to grant the request.

3. Emergency Removal

In certain cases, the College may find it necessary to remove or restrict a student Respondent from its education program or activity on an emergency basis, even before the filing of a formal complaint. Before removing or restricting a student Respondent from any of the College's education programs or activities, the Response Team shall undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student, other individual(s), or the Campus community arising from the allegations that justifies removal. The assessment shall be based on the totality of the known circumstances pertaining to the health or safety of a student, other individual(s), or the campus as a whole. The student Respondent will be provided with written notice to their campus e-mail address immediately following the removal that sets forth the reasons for the removal and the procedure available to challenge the removal. The Respondent may challenge the removal by submitting a written request to the Title IX Coordinator within three business days of receipt of the written notice. The request shall set forth the reasons why the respondent believes the Emergency Removal is not warranted. The Title IX Coordinator shall then forward on that request to the Response Team or its Designee, who shall make a determination on the Respondent's request within three business days. If Respondent's written request is submitted

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via U.S. mail, three days shall be added to the time for determination to allow for delivery. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. Nor shall this provision be construed to limit the College's ability to remove other individuals, including non-student Respondents, who may pose a risk to the health and safety of others from any part of the campus or the campus as a whole.

4. Evaluation of a Formal Complaint filed by a Complainant for Jurisdiction

A Formal Complaint is a document provided to the Title IX Coordinator by the Complainant that sets forth allegations of misconduct under this Policy and that requests that the College investigate the allegations. The Formal Complaint can be provided to the Title IX Coordinator in person, electronically, via U.S. mail, or submitted before, at, or after the Complainant's initial intake meeting.

i. Initial Notice

Once the Title IX Coordinator receives a Formal Complaint, the Title IX Coordinator shall send a written notice to the Complainant and Respondent (if known), that contains: 1. Notice of the College's options for Formal Resolution and any information resolution process; 2. Notice of the allegations set forth in the Formal Complaint, including any allegations that may constitute Sexual Harassment Prohibited by Title IX, including sufficient details known at the time, which include the identities of the parties involved in the incident, if known, the conduct allegedly constituting the allegations of misconduct, and the date and location of the alleged misconduct, if known. The initial notice must include 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 any formal resolution process. The written notice must inform the parties that they may each have up to two advisors of their choice, one of whom may be, but is not required to be, an attorney for any Title IX formal resolution process, and may inspect and review evidence in line with the procedures set forth in Section X of this Policy or the relevant conduct process. The written notice must also inform the parties of those provisions in this Policy that prohibits knowingly making false statements or knowingly submitting false information. The written notice shall offer each of the parties the opportunity to meet with the Title IX Coordinator to discuss the notice and to answer any questions.

ii. Complaint Evaluation.

Once a Formal Complaint is filed, an evaluation of the complaint will be conducted to determine if (1) the complaint contains allegations, that, if proven, would constitute (i) Sexual Harassment Prohibited by Title IX by examining the conduct alleged; whether or not the conduct occurred in the United States; whether the Complainant is already participating or seeking to participate in any of the College's educational programs or activities; and whether or not the alleged conduct occurred as part of the College's educational programs or activities; or (ii) if the allegations do not constitute Sexual Harassment Prohibited by Title IX the complaint contains allegations, that, if proven, would constitute Sexual Assault; Domestic Violence; Dating Violence; or Stalking (collectively, the "First Level Offenses") and (2) if the complaint contains allegations, that, if proven, would constitute any other misconduct prohibited under this Policy or any other College policies that may also apply to the Respondent. During the initial evaluation, the allegations and all reasonable inferences therefrom shall be construed in a light most favorable to the Complainant. The Title IX Coordinator or their designee shall be charged with performing this

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initial evaluation and preparation of the writings discussed below. For avoidance of doubt, all references to the Title IX Coordinator below also include references to a designee.

Charged First-Level Offenses.

If the Title IX Coordinator determines that the allegations, if proven, would constitute any of the First-Level Offenses, the Title IX Coordinator shall prepare a complaint notification letter that contains the list of charged First Level Offenses, along with any other charged violation of misconduct under this Policy or any other College policies that may also apply to the Respondent, that shall all together be investigated by the College and may be all together adjudicated under the Title IX formal resolution process set forth in Section XII. The Title IX Coordinator is authorized to charge violations under alternative theories of responsibility. If the Respondent is a student, all of the charges shall be adjudicated under the Title IX grievance process set forth in Section XII. If the Respondent is a volunteer or employee of the College, the First-Level Offenses shall be adjudicated under the Title IX formal resolution process set forth in Section XII. As detailed further in Section XII, the hearing officer will have the authority to make a preliminary recommendation on any charged offense that is not a First-Level offense.

No First-Level Offenses Charged.

If the allegations do not constitute a First-Level Offense, the Title IX Coordinator will dismiss the complaint for purposes of the Title IX grievance process, but also should nevertheless determine what, if any, offenses under this Policy or any other College policies that may also apply to the Respondent may be charged. In so doing, the Title IX Coordinator should evaluate the allegations in the formal complaint and all reasonable inferences therefrom in a light most favorable to the Complainant. If the Title IX Coordinator determines that the Complaint should be investigated and then transferred to another conduct proceeding for adjudication in accordance with the procedures of that body after investigation as set forth in Section X because the allegations do not contain misconduct that comprises a First-Level Offense then the Title IX Coordinator shall set forth the reasons for that decision in writing to the Complainant.

That writing shall contain the basis for the Title IX Coordinator's decision along with a list of any other charged misconduct under this Policy or any other College policies that may also apply to the Respondent that will be investigated before transfer to the correct conduct board for adjudication of a determination of responsibility and sanction, if any. The definitions set forth in Section III of this Policy apply and shall govern any other conduct proceeding.

Unless good cause arises, the initial determination shall be sent to the parties via email no later than ten business days after receipt of the formal complaint. Any extensions for good cause shall be communicated in writing to the parties along with an explanation of the delay or extension and the reasons for the extension.

iii. Request for Review of Initial Determination of Jurisdiction.

If the Formal Complaint is dismissed for purposes of Title IX, but referred to another conduct body for adjudication, the parties may request that this determination be reviewed. The review will be conducted in an impartial manner by a two-person panel comprised of two Vice Presidents or designee(s) appointed by the Title IX Coordinator. These persons chosen to hear the request for review must be impartial and not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

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The review must be submitted via email to the Title IX Coordinator or designee within three business days of receiving the written decision. 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 only grounds for the review are:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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
- (C) 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.

The receipt of the request for the review will be acknowledged in writing (which can include email). The Title IX Coordinator shall provide the other party with a copy of the request for review within one business day of receipt. The other party shall have an opportunity to respond to the request for review within three business days of receipt.

The Review Panel shall first consider whether the review request and any response have been timely filed and if so, whether the review request is properly framed based on one or more of these grounds. If the Review Panel determines that the review request is not properly framed or timely filed, the review will be denied. The burden of proof lies with the party seeking review, as the original determination is presumed to have been reasonable and appropriate.

The initial complaint review is not intended to be a hearing of the allegations of the formal complaint. Rather, it is a determination of whether or not the determination of jurisdiction is correct.

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

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

The Review Panel will render a written decision on the appeal to the parties within five business days from the date of the submission of the request for review, and response, if any. This review decision is final and binding.

5. Evaluating Requests for Confidentiality

McDaniel College strives to respect the personal and sensitive nature of Sexual Misconduct. If an individual who allegedly experiences an incident of gender discrimination requests confidentiality or 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 for the individual who reported the incident. Although rare, there are times when McDaniel may not be able to honor the individual's request and may have to initiate an investigation. 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.

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McDaniel has designated the Title IX Coordinator or their designees 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 or their designee to weigh all factors. The Title IX Coordinator or designee(s) may consider any of the following factors to determine whether a request for confidentiality can be granted:

1. Evidence, if any, of the increased risk that the respondent may continue to commit acts of sexual or gender-based misconduct, such as:
 - Whether there have been other reports or complaints of sexual misconduct or gender-based misconduct about the same Respondent;
 - Whether the Respondent has a history of arrests or records indicating a history of engaging in sexual or gender-based misconduct; or
 - Whether the Respondent threatened further misconduct against the Reporter or others.
2. Whether the reported offense(s) constituting sexual or gender-based misconduct was allegedly committed by multiple perpetrators;
3. The employment status of the Respondent;
4. If the Complainant was a student at the time the alleged events occurred, whether or not the Respondent is a faculty or staff member or volunteer;
5. Whether the alleged act was perpetrated with a weapon;
6. Whether the victim is a minor (i.e., under Maryland's age of legal consent);
7. Whether the College possesses other means to obtain relevant evidence of the alleged act of sexual or gender-based misconduct (e.g., security cameras or personnel, physical evidence);
8. 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;
9. The respective ages of the parties;
10. Whether there is any other evidence suggesting predatory behavior by the Respondent(s); and/or
11. Any other fact determined relevant by the Title IX Coordinator or Designee to the matter at hand.

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. In the event McDaniel decides to initiate a formal investigation, the Title IX Coordinator shall prepare and sign a Formal Complaint on behalf of the College. However, the Title IX Coordinator shall not be a party to the proceeding, and the Complainant will not be required to participate in any proceedings.

If Confidentiality is Requested but Cannot be Maintained

If McDaniel determines that it cannot maintain an individual's confidentiality after it has been

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requested based on the factor(s) set forth above, 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 or gender-based misconduct to its conclusion in cases where not pursuing the incident would constitute a danger to the College community.

If, when responding to reports of alleged acts of Sexual Misconduct 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 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 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 IX(A)(2). Supportive Services.

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, including the College's remedies-based resolution process, discussion in sub-section 6 below.

6. Remedies-Based Resolution Process

The remedies-based resolution option is designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Subject to the approval of the Response Team, remedies-based resolution is available to the parties in all cases where a formal complaint has been filed, except where the complainant is a student and the respondent is a faculty or staff member. When the Complainant and Respondent are both students, the remedies-based resolution can be invoked prior to the filing of a formal complaint. Prior to beginning the remedies-based resolution process, the parties must voluntarily provide written consent to participate, acknowledging that: (1) once a remedies-based resolution is reached, the parties will be precluded from resuming a formal complaint arising from the same allegations, absent exceptional circumstances; (2) at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

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 supportive measures are provided in Section IX(A)(3). Other potential remedies

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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.

The College will not compel any party to engage in mediation, a Complainant to directly confront the Respondent, or to participate in any particular form of remedies-based resolution. The 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 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. Statements made by either party during the course of the remedies-based resolution process are considered confidential and inadmissible, regardless of the outcome of the remedies-based resolution process.

X. Investigations for Formal Resolution

A. Overview and Time Frame

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.

All investigations are expected to be completed (i.e., all direct evidence related to the allegations will have been gathered) within 45 calendar days from the date of the last preliminary meeting with the parties, unless extended for good cause. If the parties decide to pursue the remedies-based resolution at any time during the investigation, this shall pause the investigation and stay the 45-day deadline pending the outcome of the remedies-based resolution. Any extensions for good cause shall be communicated in writing to the Complainant and the Respondent along with an explanation of the delay or extension and the reasons for the extension.

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.

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.

B. Preliminary Investigative Meeting with the Parties

Promptly after the initial evaluation of the formal complaint and the appeal of the evaluation (if any) is complete, 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 Complainant/Respondent have elected to have an advisor(s), they are encouraged to permit the advisor(s) to accompany them 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 any formal

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resolution process. A No Contact Order of this type is in no way a punitive or disciplinary action; does not imply culpability for violating any of the policies under investigation; will not influence the outcome of the investigation; and will not appear on either party's record. If the respondent is a faculty or staff member, they may also be placed on administrative leave throughout the resolution of the grievance process whether or not the case is formally resolved through the procedure set forth in Section XII or via the appropriate staff or faculty disciplinary process.

C. Investigative 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 not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. 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 to identify witnesses, including fact and expert witnesses that they would like the investigator to interview as well as other inculpatory and exculpatory evidence. Should a party wish to designate an expert witness for the investigator to interview, that person must provide that witness at their own expense.

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, non-privileged physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate.

The College will keep all parties informed of the progress of the investigation. Should the investigator uncover and decide to investigate new allegations not included in the initial notice to the parties, both parties will be promptly notified in writing. The Title IX Coordinator will evaluate whether or not the new allegations require an amendment of the charges. If an amendment is warranted, the Title IX Coordinator will promptly issue a notice with the amended charges and the basis thereof to the parties.

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 IX(A)(5) for a review of the factors to be considered in pursuing an investigation.

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 in Section I(B).

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In all cases, the parties will receive written notification if the investigator determines that additional allegations have arisen or possible policy violations will be investigated and adjudicated in accordance with these procedures.

Prior Sexual History

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. 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.

Treatment Materials and other Privileged Materials

A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, will not be disclosed or documented in the investigative report unless the party provides voluntary, written consent.

Additionally, other information protected under a legally recognized privilege such as the attorney-client privilege shall not be disclosed or documented in the investigative report unless the person holding such privilege has waived the privilege.

Character Evidence and Evidence of a Pattern of Behavior

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 weight given to that evidence in determining responsibility 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 Sexual Misconduct. The parties may present character evidence to the extent that it is relevant to determining responsibility.

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 grievance hearing must have been interviewed first by investigators.

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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 parties regarding rights, procedural options and the implementation of supportive 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.

D. Investigative Materials and Report

1. Non-First Level Offenses

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 what information contained therein is directly related to the allegations at hand. In general, the Title IX Coordinator or designee may redact information that is irrelevant, excluded under the rules of the relevant adjudicatory conduct process, 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 investigative report may not be duplicated, photographed, scanned, or copied by any party. A draft of that report will be provided to the relevant faculty, staff, or student conduct body for those matters where First Level Offenses are not charged for review under the procedures of that body.

2. First Level Offenses

i. Review of Investigative Materials

Once the investigation has concluded, the Title IX investigator, in conjunction with the Title IX Coordinator or designee, shall gather all evidence not privileged, that is directly related to the allegations. Unless otherwise prohibited by law, the College shall make electronic copies of the evidence available to the parties and their advisors. Given the confidential nature of the materials and proceeding, the parties and their advisors will be required to sign a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional licensing board, or other legal action.

The parties may then review the information gathered. Both will have an opportunity to respond in writing to this information within a determined ten calendar day period of time.

ii. Preparation of Final Report

The investigator will consider the parties' responses in completing the final investigative report, which will compile all relevant evidence. The report will be provided to the parties no later than ten calendar days before any hearing on the formal complaint and before any pre-hearing

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meeting. The final investigative report will be redacted for information that is irrelevant or privileged. Unless otherwise prohibited by law, the College shall make electronic copies of the evidence available to the parties and their advisors. Given the confidential nature of the materials and proceeding, the parties and their advisors will be required to sign a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review. Any violation of the non-disclosure agreement may result in additional misconduct charges against a party, a report to an attorney's professional licensing board, or other legal action. The parties shall have the opportunity to provide any written response to the investigative report to the Title IX Coordinator within five-calendar days of receipt. The parties may request to review the other party's written response statements once they have been submitted.

If at any stage following the submission of the parties' responses new evidence directly related to the allegations is gathered, it will be shared with the parties and their advisors in line with the parameters set forth in the initial paragraph of this subsection. The parties 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 response statements once they have been submitted.

XI. Pre-Hearing Procedures-Title IX Hearing

A. Post-Investigative Conference

Not later than ten calendar days after the investigative report is finalized unless extended for good cause, a designated member of the Response Team will meet with both parties and their advisors separately to once again review resolution options. The options are as follows:

1. Remedies-Based Resolution

The remedies-based resolution option is designed to eliminate a hostile environment without taking disciplinary action against a respondent. It is further discussed in Section IX.

2. Formal Resolution

The formal resolution option is a hearing process. A hearing officer will be assigned by the Title IX Coordinator or designee to make a determination of any Policy violations based on the relevant facts derived from the completed investigation report and the testimony taken during the decision hearing. The Response Team will authorize the formal resolution process.

a. Permissive Dismissal

The College reserves the right to dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: the 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 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. Upon dismissal, the Title IX Coordinator shall send notice to the parties as set forth in Section III(A)(4) ("Evaluation of a Formal Complaint"). The parties shall have the right to request review of a permissive dismissal in line with the procedures set forth in Section III (A)(4).

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b. 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 when the cases arise out of the same set of facts and circumstances, including situations where:

- There are allegations from multiple complainants against the same respondent;
- There are allegations from the same complainant against multiple respondents that arise out of the same set of facts and circumstances
- The respondent has filed a complaint against the complainant.

B. Hearing Officer Designation and Notification

The hearing will be presided over by one decisionmaker, the "Hearing Officer." The Hearing Officer will preside over the hearing and conduct a pre-hearing meeting with parties and their advisors. The parties will be informed of the hearing meeting at least 10 calendar days prior to the date of the hearing. They will also be informed of the identity of the designated Hearing Officer.

1. Opportunity to Object

The parties will be allowed to object to the designated Hearing Officer on the basis of bias or conflict of interest. All objections must be made in writing and delivered to the Title IX Coordinator or designee within 24-hours of receiving notification of the name of the Hearing Officer. The Complainant or Respondent should explain the basis for their objections with particularity. The party objecting to the designation of the Hearing Officer bears the burden of demonstrating why the Hearing Officer should not preside over their matter. The Title IX Coordinator or designee will respond to the objection in writing within 48 hours with a decision, and if the objecting party prevails, include the name of the new person assigned to replace the removed Hearing Officer.

C. Pre-Hearing Meeting

Upon receiving their designation by the Title IX Coordinator or Designee, the Hearing Officer will review the investigative report and individually invite the Complainant and Respondent and their advisors to a pre-hearing meeting, which may be conducted telephonically or via videoconferencing. The hearing officer will provide the date and time of each pre-hearing meeting to the parties and their advisors not less than three calendar days before that meeting. On or before the hearing meeting date, each party and their advisors shall submit proposed witness lists and items of evidence. The hearing officer shall not share either party's submission with the other party or their advisor. Any individuals included on the witness list or items of evidence listed must have been interviewed by the investigator or in the investigative report for it to be considered at the hearing. The Hearing Officer reserves the right to determine the appropriateness and relevance of the questions.

At the Pre-Hearing Meeting, the Hearing Officer shall review the hearing process, the rules of decorum governing the conduct of advisors, parties, and witnesses, and to answer any questions from the parties. The advisors are expected to have reviewed this Policy and any other relevant investigative materials prior to the Pre-Hearing meeting. An advisor's lack of preparedness shall not constitute cause for any delay of the Pre-Hearing Meeting or the hearing itself.

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If the party does not have an advisor and does not intend to bring an advisor to the Title IX hearing, they shall inform the Hearing Officer on or before the pre-hearing meeting, so that the College may arrange for an advisor for the limited purpose of cross examination at the hearing.

XII. Title IX Hearing

A. Hearing Coordinator.

The Title IX Coordinator or designee will serve as the hearing coordinator to assist the Hearing Officer, the Parties, and Witnesses with any technical or administrative issues during the Hearing. The hearing coordinator has no decision-making power. In the event of technical difficulties, the hearing coordinator will make appropriate accommodations to ensure a prompt, thorough, and equitable hearing.

B. Hearing to be held via Videoconferencing Technology

The parties, their advisors, and witnesses will be sequestered from one another and the Hearing Officer during the hearing. The hearing will be held using technology that will enable any or all parties, witnesses, and other participants to appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The hearing will be recorded.

C. Hearing Procedure

The hearing shall begin with the Hearing Officer formally opening the hearing. Each party will have the opportunity to present a brief opening statement to the Hearing Officer if they so choose. Both parties will next have an opportunity to provide direct testimony to the Hearing Officer. At their discretion, the Hearing Officer may choose to call to testify as part of the hearing 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 Hearing Officer call any witness who was previously interviewed during the investigative process to testify.

The order of the interviews during the hearing will be determined by the Hearing Officer. Each party may have one advisor of their choice present during the hearing and a support person of their choice. Only the advisor will be permitted to conduct cross examination.

Each person testifying will be allowed to present direct testimony to the Hearing Officer. After the person's narrative concludes, the Hearing Officer will be permitted to first ask relevant questions of the person testifying, whether the person is a party or a witness.

- If the person testifying is a party, once the Hearing Officer's questions have concluded, the Hearing Officer will then permit the opposing party's advisor to ask relevant questions and follow-up questions to the party, including questions that challenge credibility.
- If the person testifying is a witness, once the Hearing Officer's questions have concluded, the Hearing Officer will then permit each of the party's advisors to ask relevant questions and follow-up questions to the party, including questions that challenge credibility. The Hearing Officer shall determine which advisor shall be permitted to go first.

Cross-examination at the live hearing must 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. Additionally, the questions must not seek

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privileged information. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If the question is duplicative or repetitive of other questions, the Hearing Officer may conclude that the question is not relevant. The Hearing Officer may also hear any objections as to privilege from the party or their advisors. The Hearing Officer may hear discussion on the issue of relevance by each of the advisors prior to the Officer's determination on whether the question should be allowed. Only after the Hearing Officer has expressly indicated that a question is permissible, will a person be allowed to answer the question.

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.

If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice to conduct cross-examination on behalf of that party.

If an advisor refuses to comply with the College's rules of decorum, the College may remove that advisor and may provide that party with a different advisor to conduct cross-examination on behalf of that party.

If a party does not attend the hearing, the College will designate an advisor to serve on that party's behalf for the sole purpose of conducting cross examination.

The Hearing Officer will allow for breaks during the proceeding. After all testimony has been taken, each party will be allowed to offer a brief closing statement, if they so choose.

At the discretion of the Hearing Officer, anyone disrupting the process may be removed from a meeting.

The advisor will not be permitted to address the Hearing Officer except as necessary while conducting cross-examination.

D. Deliberations

After all of the information has been reviewed, the Hearing Officer will deliberate in private and render a decision within seven (7) business days of the final panel meeting. The Title IX Coordinator or designee may remain present for deliberations but may not participate in the deliberations and may not vote.

The Hearing Officer will rely on the Investigation Report, evidence and the interviews conducted during the hearing for their determination of the relevant facts of the case.

Necessity of Cross-Examination of Statements Limited Only to First Level Offenses. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility for a charged First-Level Offense; provided, however, that the Hearing Officer cannot 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

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other questions. As used here, “refusal to submit to cross-examination” means when a party or witness refuses to undergo cross-examination by an advisor. It does not refer to when a party or witness refuses to answer questions posed by the Hearing Officer. If a party or witness refuses to respond to the Hearing Officer’s question(s), the Hearing Officer is not precluded from relying on that party or witness’s statements. “Statements” as used herein do not include evidence of alleged verbal misconduct or evidence (such as videos) that does not constitute a person’s intent to make factual assertions.

The Hearing Officer will determine a Respondent’s responsibility for each charged violation 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, admissible information, that the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Officer shall make final findings of responsibilities for all charges in all matters where the Respondent is a student. If the respondent is a volunteer or employee of the College, the Hearing Officer shall make a final finding of responsibility for any First Level Offense charged. For any charged offense that is not a First-Level Offense, the Hearing Officer shall make a preliminary recommendation on responsibility. That recommendation shall be subject to modification or revision by the relevant conduct officer with jurisdiction over the respondent.

Only the decision on responsibility will be shared with the parties, not the content of the deliberation discussion. The Hearing Officer will issue a written determination on responsibility that includes:

1. The identification of the allegations potentially constituting the basis of each alleged violation;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting each determination of responsibility or preliminary recommendation, including a discussion on any statements that were not relied upon because they were not subject to cross-examination;
4. Conclusions regarding the application of this Policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility or preliminary recommendation;
6. Any disciplinary sanctions the recipient imposes on the respondent, which will be determined in line with the procedures set forth in paragraph E. For reports involving A First Level Offense, 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.
7. 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;
and
8. The College’s procedures and permissible bases for the complainant and respondent to appeal.

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The College will provide the written determination to the parties simultaneously. For all First Level Offenses, and matters where the Respondent is a Student, the determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. A copy of this written determination along with the investigative report and hearing transcript shall be provided to the relevant conduct officer for a final determination of any preliminary finding in line with the relevant conduct procedures of that body.

The Title IX Coordinator or Designee shall be responsible for the implementation of any remedies provided to the Complainant.

E. Sanctions

If the hearing officer finds the Respondent responsible, then sanctions will be determined as follows:

- a. The classification of the Respondent will determine the procedure and type of sanctions available.

The Hearing Officer 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. The Respondent's voluntary intake of alcohol and/or drugs is not considered a mitigating circumstance.

1. For Students: If a student is found responsible, the Hearing Officer 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 any First Level Offense except dating violence, domestic violence, or stalking may receive a sanction ranging from suspension to expulsion.

Sanctions that may be imposed under this policy for acts of dating violence, domestic violence, stalking, coercion, gender-based discrimination, gender-based harassment, intimidation, retaliation, sexual exploitation, and unwelcome sexual conduct 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 that do not impact graduation date, suspension or expulsion from the college and revocation of a degree.

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2. For staff and non-tenure track faculty: If a staff member or a non-tenure track faculty member, is found responsible, the Hearing Officer will determine appropriate sanctions for any First Level Offense that may include those set forth below in conjunction with the Associate Vice President for Administration, their designee, and/or the appropriate divisional vice president. The minimum sanction for acts that are any First Level Offense is dismissal. For acts of coercion, gender-based discrimination, gender-based harassment, intimidation, retaliation, sexual exploitation, and unwelcome sexual conduct include: a first 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.
3. For tenured or tenure track faculty: If a tenured or tenure track faculty member is found responsible, the Hearing Officer 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 that are any First Level Offense is dismissal.

Once the relevant conduct board has made a final determination of responsibility, sanctions that may be imposed under this policy by that body for acts of coercion, gender-based discrimination, gender-based harassment, intimidation, retaliation, sexual exploitation, and unwelcome sexual conduct include: 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

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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 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 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.

4. 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 Hearing Officer will consult with the President before determining the recommended sanction(s). The minimum sanction for acts that are any First Level Offense is dismissal. For acts of coercion, gender-based discrimination, gender-based harassment, intimidation, retaliation, sexual exploitation, and unwelcome sexual conduct include: a first 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.
5. For Board of Trustee Members: If a Member of the Board of Trustees is found responsible, the Hearing Officer will consult with the Chair of the Board of Trustees before determining the recommended sanction.
6. For the President: If the President is found responsible, the Hearing will consult with the Chair of the Board of Trustees before determining the recommended sanction(s).

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F. Audio Recording

The audio recording of the hearing 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 Hearing Officer 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.

XIII. Appeal Process

Both parties may request that the final outcome be reviewed. Outcomes concerning preliminary recommendations are not subject to this review process, but instead shall be subject to the appeal process (if any) of the relevant conduct body.

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. These persons shall be different from those persons who adjudicated a review of dismissal in the proceedings.

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. The only grounds for final review are:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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
- (C) 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.

The receipt of the request for the review will be acknowledged in writing (which can include email). The Title IX Coordinator shall provide the other party with a copy of the request for review within one business day of receipt. The other party shall have an opportunity to respond to the request for review within three business days of receipt.

The Review Panel 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 of the three grounds. If the Review Panel 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 who shall forward it on to the Review Panel.

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.

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

- Accepts the decision of the Hearing Officer,
- Amends the decision of the Hearing Officer, 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 thirty days from the date of the submission of all appeal documents by both parties, unless extended for good cause. Final review decisions are absolute.

XIV. Limited Student Conduct Immunity for Reporting Parties and Witnesses

Individuals with information about an incident of Sexual and Gender-Based Misconduct 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 limited immunity for other student conduct substance abuse violations to potential witnesses and complainants in order to facilitate the reporting and resolution of incidents of Sexual and Gender-Based Misconduct. The College, in its discretion may extend this limited immunity to other student conduct violations.

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.

XV. 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.

XVI. Records

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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, for seven years including:

- (A) Each sexual harassment investigation including any determination regarding responsibility and any hearing recording, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
- (B) Any appeal and the result therefrom;
- (C) Any informal resolution and the result therefrom; and
- (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.
- (E) Records of any actions, including any supportive measures, taken in response to a report or formal complaint, documenting the basis for the College's conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If the College does not provide a complainant with supportive measures, then the College will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

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 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.

XVII. Misuse of Policy

The purpose of this policy is to promote and maintain an environment at McDaniel College that is free from Sexual Misconduct. 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

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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.

XVIII. Required Training

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on non-discrimination, the definition of Sexual Harassment as Defined by the Department of Education and the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. All decision-makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

In addition, any hearing adjudicators must have 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.

Training materials for trainings conducted on or after August 14, 2020 shall be made available on the College website.

XIX. To Request Accommodations

If accommodations **for pregnancy, disability, religion or otherwise** 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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