

# THE CLAREMONT COLLEGES

## Title IX

# Sexual Harassment Policy

Effective August 14, 2020

Revised February 15, 2021



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## I. Introduction

The Claremont Colleges believe all members of our community – including students, faculty, and staff – should pursue their work and education in a safe environment, free from discrimination, harassment, and retaliation. The purpose of this Policy is to prevent and respond to Sexual Harassment, as defined within this Policy.

Sexual Harassment, as defined by this Title IX Sexual Harassment Policy (Policy), is prohibited within all of The Claremont Colleges.<sup>1</sup> The Claremont Colleges will respond promptly and effectively to reports of Sexual Harassment. Other forms of sexual discrimination, sexual harassment, and sexual exploitation that do not meet the definition of Sexual Harassment under this Policy, remain prohibited by each Institution in its individual policies.

This Policy addresses the member Institutions' (see below) responsibilities and procedures related to Sexual Harassment, as defined in this Policy, to ensure an equitable and inclusive education and employment environment. The Policy defines Sexual Harassment and Retaliation, and explains the administrative procedures member Institutions use to resolve reports of such conduct.

***Which Institutions have adopted this Policy?*** This Policy applies to member Institutions that compose The Claremont Colleges.

The Claremont Colleges is composed of seven (7) individual Institutions<sup>2</sup>:

- Pomona College
- Claremont Graduate University
- Scripps College
- Claremont McKenna College
- Harvey Mudd College
- Pitzer College
- Keck Graduate Institute

Collectively, the member Institutions are referred to as TCC throughout this Policy.

The Policy, while identical across TCC, is adopted and overseen by each individual Institution.

This Policy does not alter any institutional obligations under federal disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties and witnesses may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator or Human Resources professional at any point before or during the Title IX Grievance Process. The Title IX Coordinator and/or Human

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<sup>1</sup> Title IX Sexual Harassment now refers to specific forms of sexual misconduct (see Section IV). Conduct that does not meet the definition of Sexual Harassment, as defined by this Policy, may still be addressed through other policies and processes, such as those under the Institution's student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution. Interrelated conduct that includes allegations of conduct prohibited by this Policy, as well as conduct outside of this policy, may be joined in one investigation and hearing, as outlined in Section IX.A.11.

<sup>2</sup> Each Institution has its own formal governance structure and independent board. As a consortium, the Institutions work together to resolve concerns that cross the boundaries of individual Institutions.

Resources professional will submit any request for reasonable accommodation to the appropriate department for review and response. The Title IX Coordinator and/or Human Resources professional will not affirmatively provide disability accommodations that have not been specifically requested by an individual, even where the individual may be receiving accommodations in other institutional programs and activities.

**Who does this Policy apply to?** This Policy applies to any allegation of Sexual Harassment and/or Retaliation, brought against a student within TCC. Some Institutions also apply this Policy to matters involving staff and faculty. This Policy is applicable as follows:

TCC Institution	Allegations Against Students	Allegations Against Faculty	Allegations Against Staff
Claremont Graduate University	X	X	X
Claremont McKenna College	X		
Harvey Mudd College	X		
Keck Graduate Institute	X	X	X
Pitzer College	X	X	X
Pomona College	X		
Scripps College	X	X	X

**What is the purpose of this Policy?** This Policy is enacted to comply with Title IX of the Educational Amendments of 1972 and its subsequent accompanying regulations. Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX’s prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student, staff, or faculty member’s participation in our educational programs and opportunities.

On May 6, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 (the Final Rule). The Final Rule did a number of things, including:

- Specifically redefined “Sexual Harassment,” (including forms of sex-based violence), for purposes of Title IX.

- Addressed how an educational institution must respond to reports of Sexual Harassment, as defined by the Final Rule.
- Mandated the grievance process an educational institution must follow before issuing disciplinary sanctions against a person accused of Sexual Harassment, as defined by the Final Rule.

Based on the requirements of the Final Rule, TCC implemented this TCC Title IX Sexual Harassment Policy effective August 14, 2020, and revised effective February 15, 2021.<sup>3</sup>

This Policy outlines the procedures TCC will follow to ensure a prompt and equitable resolution of student and employee complaints alleging Sexual Harassment. The Institutions are not precluded from investigating other conduct that, if proven, would not constitute Sexual Harassment under this Policy but may constitute a violation of other Institution policies.

***How does this Policy impact other campus disciplinary policies?*** Only incidents that would qualify as Sexual Harassment, as defined by this Policy, will be investigated and, if appropriate, brought to a live hearing through the process defined below.

Each Institution covered by this Policy remains committed to addressing any violations of its policies, even those that do not meet the narrow standards defined under the Final Rule.

If alleged misconduct falls outside this Policy (including alleged misconduct discovered in the course of investigating conduct falling within this Policy), each Institution retains authority to investigate and adjudicate the allegations under their individual policies and procedures.

The elements and process established in this Policy, and as required under the Final Rule, have no effect on any other Institution policy or Code of Conduct. This Policy does not set a precedent for other policies or processes of the Institutions and may not be cited for or against any right or aspect of any other policy or process.

***How does this Policy impact the handling of complaints?*** Institutions' existing Title IX Offices and reporting structures remain in place. This Policy changes the way the Title IX Offices handle reports alleging Sexual Harassment, as defined by this Policy.

Further, as outlined in Section XV., this Policy applies only to Sexual Harassment (as defined by this Policy) alleged to have occurred on or after August 14, 2020. Incidents of Sexual Harassment alleged to have occurred before August 14, 2020 will be investigated and adjudicated according to the process and definitions in place at the time of the alleged incident.

***What is the difference between reporting and disclosing Sexual Harassment?*** Some individuals within TCC are required to report alleged misconduct, including Sexual Harassment, when they learn of the alleged behavior. Other individuals, including Confidential Resources, are not required to report Sexual Harassment. The information below provides additional clarification:

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<sup>3</sup> See Footnote 17.

- **Reporting Sexual Harassment.** Any person may report misconduct, including Sexual Harassment. The reporting party need not be the purported victim of the Sexual Harassment.

Any person wishing to report Sexual Harassment may do so utilizing the contact information of the Title IX Coordinator for their individual Institution (Home Institution). These reports shall be accepted when received in-person, via mail, electronic mail, telephone, and/or by any other means clearly defined by TCC. Any person can report alleged Sexual Harassment verbally or in writing.

If an individual communicates with a Responsible Employee (defined in Section III) that they experienced or are aware of specific incidence(s) of alleged Sexual Harassment, that communication is considered a report of Sexual Harassment and the Responsible Employee is required to inform their Title IX Coordinator. The Responsible Employee is expected to keep information about any report in confidence, meaning they are not to share with anyone other than the Title IX Coordinator.

If an individual communicates with their Title IX Coordinator that they experienced or are aware of specific incidence(s) of alleged sexual misconduct, harassment and/or discrimination, that communication is also considered a report of a possible Policy violation. The Title IX Coordinator is also obligated to keep information about a report in confidence to every extent possible by law.

Upon receipt of a report of Sexual Harassment, the Institution is required to respond. This response **may** include the initiation of the Title IX Grievance Process.<sup>4</sup> Reports of Sexual Harassment do not automatically initiate the Title IX Grievance Process. The Title IX Grievance Process is only initiated upon receipt of a signed Formal Complaint, as defined in Section III.

- **Disclosing Sexual Harassment.** A disclosure is made when an individual communicates with a Confidential Resource (defined below) or someone who is not a Responsible Employee (defined below) about misconduct, including Sexual Harassment, that they either experienced or became aware of. A disclosure to a Confidential Resource will be kept confidential unless otherwise requested by the disclosing individual. A disclosure does not result in any formal report or initiation of the Title IX Grievance Process unless requested by the disclosing individual. Each Institution's Title IX Coordinator maintains a list of all Confidential Resources available to students, staff, and faculty.

Accordingly, if an individual wishes to discuss alleged Sexual Harassment without initiating the Title IX Grievance Process, they may disclose the conduct to a Confidential Resource.

**Publication.** This Policy shall be distributed and made available to all members of the TCC community. The Policy, and contact information for each Title IX Coordinator, shall be present on each Institution's website. Every handbook and/or catalog made available to the members of each Institution's community shall contain a link to this Policy and the contact information for the Institution's Title IX Coordinator.

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<sup>4</sup> "The Title IX Grievance Process" refers to the process initiated upon receipt of a Formal Complaint. The Title IX Grievance Process is explored in detail in Section IX.

## II. Title IX Coordinator and TCC Title IX Process Administrator

**Title IX Coordinator.** Each Institution within TCC shall designate a Title IX Coordinator to oversee and ensure compliance with this Policy. Each Title IX Coordinator is responsible for ensuring compliance with Title IX and this Policy within their Institution.

The name and contact information (phone number, email address, and office address) for each Institution’s Title IX Coordinator is as follows:

Institution	Title IX Coordinator	Email	Address
Claremont Graduate University	Jami Hinshaw Title IX and Clery Coordinator	<a href="mailto:jami.hinshaw@cgu.edu">jami.hinshaw@cgu.edu</a> (909) 607-1887	160 E. 10th Street Harper Hall East Claremont, CA 91711
	Alejandra Gaytan, Director of Human Resources	<a href="mailto:alejandra.gaytan@cgu.edu">alejandra.gaytan@cgu.edu</a> (909) 607-4404	
	Dr. Patricia Easton Executive Vice President and Provost	<a href="mailto:patricia.easton@cgu.edu">patricia.easton@cgu.edu</a> (909) 607-3318	
Claremont McKenna College	Lynzie DeVeres, Assistant VP for Diversity and Inclusion  Title IX Administrator	<a href="mailto:ldeveres@cmc.edu">ldeveres@cmc.edu</a> (909) 607-8131 and (909) 607-2000	385 E. 8 <sup>th</sup> Street Marian Miner Cook Athenaeum, Second Floor Claremont, CA 91711
Harvey Mudd College	Dr. Jennifer Alanis  Title IX Coordinator	<a href="mailto:jalanis@hmc.edu">jalanis@hmc.edu</a> (909) 607-3470	301 Platt Boulevard Platt Campus Center Claremont, CA 91711
Keck Graduate Institute	Cynthia Martinez  Interim Title IX Coordinator	<a href="mailto:cynthia_martinez@kgi.edu">cynthia_martinez@kgi.edu</a> (909) 607-7150	535 Watson Drive Building 535, Room 30 Claremont, CA 91711
Pitzer College	Corinne Vorenkamp  Title IX Coordinator	<a href="mailto:titleix@pitzer.edu">titleix@pitzer.edu</a> (909) 607-2958	1050 N. Mills Avenue Broad Center, Room 212 Claremont, CA 91711

Institution	Title IX Coordinator	Email	Address
Pomona College	Erica Moorer Associate Dean Title IX Coordinator	<a href="mailto:Erica.Moorer@pomona.edu">Erica.Moorer@pomona.edu</a>  (909) 621-8017	333 N. College Way  Alexander Hall: Suite 113  Claremont, CA 91711
Scripps College	Sara Miller Title IX Coordinator	<a href="mailto:titleix@scrippscollege.edu">titleix@scrippscollege.edu</a>  (909) 607-7142	919 North Columbia Avenue  McAlister Center, Lower Level  Claremont, CA 91711

Each Institution’s Title IX Coordinator, or their designee, serves as the primary point of contact for individuals from their campus involved in the Title IX Grievance Process.

**TCC Title IX Process Administrator.** The TCC Title IX Process Administrator (referred to as the “TCC Title IX Administrator”) oversees the Title IX Grievance Process for TCC. As outlined throughout this Policy, the TCC Title IX Administrator is responsible for a variety of tasks, including, but not limited to, the following:

- Managing the Title IX Grievance Process across the six above-listed Institutions.
- In consultation with the Title IX Coordinators, evaluating and assigning Investigators, Hearing Officers, and Appeal Authorities in the Title IX Grievance Process.
- Confirming and documenting the training of all individuals involved in the Title IX Grievance Process.

The TCC Title IX Administrator can be reached at: [TitleXAdmin@claremont.edu](mailto:TitleXAdmin@claremont.edu)

### III. Relevant Terms

**Advisor:** An Advisor is an individual who provides guidance to the Complainant or Respondent throughout the Grievance and Alternative Resolution process, as set forth in this Policy. Each party is entitled to one Advisor through every stage of the Grievance process (including the Alternative Resolution process, when applicable). A party can select an Advisor of their choice at any time in the process. An Advisor can be any person, including an attorney, who is not otherwise a party or a witness.

A party does not have to have an Advisor during the investigation and Alternative Resolution process. TCC will not provide any party with an Advisor during the investigation process. However, as outlined below, each party is required to have an Advisor during the hearing. If a party has not already obtained an Advisor prior to the start of the hearing, the party’s Home Institution’s Title IX Coordinator will be responsible for ensuring their respective Respondent and/or Complainant is appointed an Advisor at no fee or charge to the party. TCC will not pay for, nor will TCC reimburse any party for the cost of, an Advisor selected by the party.

The Advisor is responsible for questioning witnesses and other parties during the hearing. Other than this responsibility, the Advisor’s role is limited. See Section IX.D.7 for a full overview of the Advisor’s role. Outside



the role of questioning during a hearing, an Advisor may never speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. TCC reserves the right to exclude an Advisor who does not abide by these procedures.

**Support Person:** A Support Person is an individual who provides emotional support to a Complainant or Respondent throughout the Grievance and Alternative Resolution process, as set forth in this Policy. Parties are entitled to one Support Person through every stage of the Grievance and Alternative Resolution process.

The Support Person may never speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. See Section IX.A.7 for a full description of the Support Person's role. TCC reserves the right to exclude a Support Person who does not abide by these procedures.

**Complainant:** A Complainant is an individual alleged to be the victim of conduct that could constitute Sexual Harassment, as defined by this Policy. For purposes of this Policy, a Complainant must be participating in, or attempting to participate in, an education program or activity of TCC. An individual who is on leave from their TCC employment or TCC student status is considered to be a person attempting to participate in an education program or activity for purposes of this Policy.

**Confidential Resource:** A Confidential Resource is a campus- or community-based resource that has the duty of confidentiality. The duty of confidentiality is an obligation on the part of the resource provider to keep a person's information private and confidential unless consent to release or share the information is provided by the disclosing person. Each Institution's Title IX Coordinator maintains a list of Confidential Resources.

There are two types of Confidential Resources at TCC:

- ***Confidential Resources with the legal privilege of confidentiality.***

Communications with these resources have legal protections from disclosure in court. These resources also possess professional obligations (the duty of confidentiality) to hold such communications in confidence and they cannot divulge information about an individual seeking their services to a third party without that individual's consent. There are established limits to confidentiality and these must be communicated to the individual seeking services.

Examples include, but are not limited to: Chaplains, Monsour and Project Sister Counselor at EmPOWER. **Some** campus Advocates are Confidential Resources with legal privilege – please check with your individual Institution for a definitive list of confidential resources with legal privileges.

- ***Institution-designated Confidential Resources.***

Communications with these resources do not have legal privilege and as such are not provided legal protections from disclosure in court. These individuals and/or offices do possess professional obligations (the duty of confidentiality) to hold communications in confidence and they cannot divulge information about an individual seeking their services to a third party without that individual's consent.

In addition to established limits to confidentiality that must be communicated to the individual seeking services, Institution-designated Confidential Resources also have limited reporting responsibilities federally mandated by the Clery Act. Under the Clery Act, their reporting obligation arises when they become aware of information or allegations of criminal behavior and must report the information

regarding an incident to the Institution's Clery Coordinator. They do not have to report identifying information about the individuals involved in an incident. Institution-designated Confidential Resources are not obligated to inform the Title IX Coordinator of a report/disclosure unless requested by the individual seeking their services.

Examples include, but are not limited to: the EmPOWER Center and the Director at the Queer Resource Center (QRC).

**Consent:** Consent is affirmative, clear, knowing, voluntary, conscious, and revocable permission. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity, and the physical conditions of sexual activity (e.g., use of a condom).<sup>5</sup>

Affirmative Consent must be ongoing and can be revoked at any time during sexual activity. It is the responsibility of each person to ensure they have the Affirmative Consent of the other to engage in the sexual activity. The existence of a dating relationship between the persons involved, or the fact of past or subsequent sexual relations between them, should never by itself be presumed to be an indicator of consent.

- Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time.
- Previous relationships or prior consent does not imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time/place).
- It is the obligation of the person initiating the sexual activity to obtain consent.
- An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or, who is coerced by a supervisory or disciplinary authority.
  - Force: violence, compulsion, or constraint physically exerted by any means upon or against a person.
  - Coercion: the application of pressure by the Respondent that unreasonably interferes with the Complainant's ability to exercise free will. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.
- A person who does not want to engage in sexual activity is not required to resist or to verbally object.
- Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent (e.g., crying, pulling away, not actively participating, uncomfortable or upset facial expressions).

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<sup>5</sup> "Condom stealthing" refers to a person's knowing or intentional removal of, or failure to use, a condom during sexual activity without the consent of the other person(s), when consent to the sexual activity was conditioned on the use of a condom.

- Consent may not be given by an individual who has not reached the legal age of consent under applicable law.

Affirmative Consent cannot be given by a person who is asleep, unconscious, or incapacitated. A person with a medical or mental disability may also lack the capacity to give consent. The definition of incapacitation follows.

**Incapacitation.** A person is unable to consent when incapacitated due to the influence of drugs, alcohol, or medication so that the person could not understand the fact, nature, or extent of the sexual activity.

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) or is physically unable to consent (e.g., asleep or unconscious).

Incapacitation may result from the use of alcohol or drugs. However, consumption of alcohol or other drugs alone is insufficient to establish incapacitation. Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for Sexual Harassment, sexual violence, stalking, or intimate partner violence, and does not diminish one's responsibility to obtain consent.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol or drugs impacts an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments; and/or,
- Capacity to appreciate the nature and the quality of the act.

A Respondent must either have known, or reasonably should have known, that a Complainant was unable to consent to sexual activity under any of the following circumstances:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol or medication, so that the person could not understand the fact, nature or extent of the sexual activity; or,
- The person was unable to communicate due to a mental or physical condition.

It shall not be a valid excuse that the Respondent believed the Complainant consented to sexual activity under either of the following circumstances:

- The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent; and/or,
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

**Education Program or Activity:** Alleged Sexual Harassment is only covered under this Policy if the alleged conduct occurred within TCC's "Education Program or Activity."

For purposes of this Policy, "Education Program or Activity" refers to all the operations of TCC, including, but not limited to: in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by TCC. It also includes off-campus locations, events, or circumstances over which TCC exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by TCC.

**Conduct that does not occur within TCC's Education Programs or Activities, as defined by this Policy, including conduct that takes place off-campus or within a TCC study abroad program, may still be addressed through other policies and processes, such as those under the Institution's student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution.**

**Formal Complaint:** A document – including an electronic submission – filed and signed by a Complainant (or with other indication that the Complainant is the person filing the Formal Complaint) or signed by the Title IX Coordinator, alleging Sexual Harassment against a Respondent that occurred within TCC's Education Programs or Activities, and requesting initiation of the procedures consistent with this Policy to investigate the allegations.

Any individual may make a report of Sexual Harassment. This individual is known as a Reporting Party. If the Reporting Party is not the Complainant, the Title IX Coordinator may initiate and sign the complaint. If the Formal Complaint is signed by the Title IX Coordinator, the Title IX Coordinator is not treated as a Complainant, nor is the Title IX Coordinator treated as a party to the complaint. At the time of filing the Formal Complaint, the Complainant must be participating in, or attempting to participate in, an education program or activity of TCC.<sup>6</sup>

Individuals can report alleged Sexual Harassment verbally or in writing.

**Reporting Party:** An individual who makes a report of alleged Sexual Harassment, as defined by this Policy. This can be any person, including an individual unassociated with TCC. A Reporting Party is not considered a Complainant for purposes of this process.

**Respondent:** A Respondent is an individual who has been reported to have engaged in conduct that could constitute Sexual Harassment, as defined by this Policy. An individual does not have to be enrolled or employed

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<sup>6</sup> The Complainant need not initiate nor sign the Formal Complaint (see definition of "Complainant" in Section III., above) to be designated a Complainant.

by TCC to qualify as a Respondent under this Policy. TCC may dismiss a Formal Complaint if the Respondent is no longer enrolled or employed by TCC; however, the decision to dismiss will be made on an individual basis, with consultation between each involved Institution's Title IX Coordinators.

**Responsible Employee:** Responsible Employees are TCC employees who, upon receipt of a disclosure or report of Sexual Harassment, are required to report the alleged conduct to the Institution's Title IX Coordinator. Responsible Employees will maintain confidentiality to the greatest extent possible and will only relay the disclosed or reported information to the Title IX Coordinator or designee.

A Responsible Employee is defined by each Institution. Please refer to your Home Institution for their definition of this term.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant and/or the Respondent. The range of Supportive Measures available is listed in Section VI. of this Policy.

**Violence:** For purposes of this Policy, violence can be physical violence or patterns of abusive behavior.

- *Physical violence:* Physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior.
- *Patterns of Abusive Behavior:* This may consist of, or include, non-physical tactics such as threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance.

Conduct by an individual in defense of self or another is not violence under this Policy. If either party asserts that they acted in defense of self or another, the Adjudicator (see Section IX.D.) will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.

## IV. Sexual Harassment and Retaliation

Only allegations of Sexual Harassment, alleged to have occurred within TCC's Education Programs or Activities, and Retaliation (as defined by this Policy) are addressed under this Policy. Sexual Harassment and Retaliation, as defined by this Policy, are prohibited within all of TCC. TCC will respond promptly and effectively to reports of Sexual Harassment and/or Retaliation, as outlined in this policy. *Other forms of sex discrimination, sexual harassment, and sexual misconduct remain prohibited by each Institution in its individual policies.*<sup>7</sup>

This section provides the definitions of Sexual Harassment and Retaliation, for purposes of this Policy.

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<sup>7</sup> Behavior which does not fall under this Policy's definition of Sexual Harassment may be addressed through other policies and processes, such as those under the Institution's student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution.

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

- a) An employee of TCC conditioning the provision of an aid, benefit, or service of the Institution on an individual's participation in unwelcome sexual conduct (also known as *quid pro quo Sexual Harassment*).
  - o Complainant's statement that they found the conduct to be unwelcome is sufficient to constitute "unwelcome conduct."
- b) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TCC's Education Programs or Activities.
  - o "Unwelcome conduct" depends on a variety of factors and must be evaluated in light of the known circumstances.
  - o "Severe, pervasive, and objectively offensive" must be evaluated in light of the known circumstances, and is dependent on the facts in each situation. However, this element must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.
- c) Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
  - o A single instance of any conduct as defined below is sufficient to constitute Sexual Harassment. Any instance of any of the conduct defined below does not need to demonstrate severity, pervasiveness, objective offensiveness, or denial of equal access to education or employment, because denial of equal access is assumed.

**Sexual Assault.** As defined in the Clery Act (20 USC 1092(f)(6)(A)(v)), Sexual Assault is: an offense that meets the definition of rape, fondling, incest, or statutory rape, as used in the FBI's Uniform Crime Reporting (UCR) Program. The relevant FBI UCR definitions are as follows:

*Rape.* 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.* 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 age or permanent mental incapacity.

*Incest.* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

*Statutory Rape.* Sexual intercourse with a person who is under the statutory age of consent. In California, the statutory age of consent is 18.

**Dating Violence.** As defined in VAWA (34 USC 12291(a)(10)), Dating Violence is: violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and,

- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and,
  - The frequency of interactions between the persons involved in the relationship.

**Domestic Violence.** As defined in VAWA (34 USC 12291(a)(8)), Domestic Violence is: acts that include felony or misdemeanor crimes of violence committed by one of the following:

- A current or former spouse or intimate partner of the Complainant;
- A person with whom the Complainant shares a child in common;
- A person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of California; or,
- Any other person whose acts an adult or youth Complainant is protected from under the domestic or family violence laws of the state of California.

**Stalking.** As defined in VAWA (34 USC 12291(a)(30)), Stalking is: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or,
- Suffer substantial emotional distress.

**Retaliation.** No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes Retaliation.

## V. Behavior That Does Not Constitute “Sexual Harassment” Under This Policy

Behavior which does not fall under this Policy’s definition of Sexual Harassment may be addressed through other policies and processes, such as those under the Institution’s student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution.

Each Institution maintains individual policies addressing sexual misconduct, harassment, and discrimination. These policies might address conduct constituting sexual misconduct, sexual harassment, and/or sex discrimination, as defined by those individual policies. Any conduct that constitutes Sexual Harassment, as defined by this Policy, is addressed using the process established in this Policy. Other conduct, as defined under other Institution policies, may be addressed using the processes established in those individual policies.<sup>8</sup>

## VI. Supportive Measures

Supportive Measures are designed to restore or preserve equal access to a Complainant's and Respondent's educational program or activity without unreasonably burdening the other party.

The Complainant's Home Institution Title IX Coordinator shall, upon becoming aware of alleged Sexual Harassment, promptly contact the Complainant if their identity is known to discuss the availability of Supportive Measures as well as other rights and options in accordance with the Institution's policies. Supportive Measures shall be offered to the Complainant regardless of whether they wish to file a Formal Complaint. In implementing any Supportive Measures, the Title IX Coordinator shall consider the Complainant's wishes.

The Respondent's Home Institution Title IX Coordinator shall offer Supportive Measures to a Respondent upon notification to the Respondent that there has been a Formal Complaint, or earlier as appropriate if a Respondent is aware of a potential complaint against them.

Supportive Measures provided to a Complainant or Respondent shall remain confidential to the extent that maintaining such confidentiality will not impair the Institution's ability to provide the Supportive Measures. For complaints involving parties from more than one Institution, each party's Home Institution Title IX Coordinator shall promptly notify the other party's Home Institution Title IX Coordinator of any Supportive Measures implemented on behalf of a party or witness. This information will not be shared with the other party unless it specifically impacts that party. If there is disagreement about whether information about a specific supportive measure for one party will be shared with the other party, the parties' Home Institution Title IX Coordinators shall confer with the TCC Title IX Administrator.

Supportive Measures may include, but are not limited to, the following:

- Counseling;
- Extensions of deadlines or other course-related adjustments, in coordination with the relevant Faculty member;
- Modifications of work or class schedules, in coordination with the relevant Faculty member and/or supervisor;
- Campus escort services;

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<sup>8</sup> Where allegations made in a Formal Complaint include both conduct that falls under this Policy and conduct that is outside of this Policy but is interrelated to Policy-covered conduct, the allegations may be joined. If the allegations under this Policy and under an Institution's other policies are joined, during the hearing direct cross-examination by a Party's Advisor will be limited to questions relating to the allegation of conduct falling under this Policy. Determinations as to when a question is appropriate to be posed by a party's Advisor or through the Hearing Officer shall be made at the sole discretion of the Hearing Officer.



- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas of campus; and,
- Other similar measures determined by the parties' Home Institution Title IX Coordinator(s) based on the specific facts of each case.

## VII. Emergency Removal

In certain circumstances, a Respondent's Home Institution may remove a Respondent from an education program or activity before the completion of the Title IX Grievance Process. Such removal will only occur on an emergency basis. The Complainant's Home Institution Title IX Coordinator or designee shall be consulted and given the opportunity to participate in every step of the emergency removal process, including participating in all communications, meetings, and correspondence regarding the individualized safety and risk assessment. An emergency removal is not equivalent to a determination of responsibility, nor is it a sanction for alleged behavior. The Respondent's Home Institution can pursue an emergency removal of a student and/or employee Respondent before or after the filing of a Formal Complaint.

Emergency removals will occur only after the Respondent's Home Institution determines there is an emergency situation. This determination occurs only after the Respondent's Home Institution has completed the following steps:

- **Completion of an individualized safety and risk analysis.** This analysis will focus on the specific Respondent and the specific circumstances arising from the allegations of Sexual Harassment.<sup>9</sup>
- **Determination that the following three components are present:**
  - *An "immediate threat" justifying emergency removal.* This analysis should focus on the Respondent's propensity, opportunity, and/or ability to effectuate a stated or potential threat. This determination will be fact-specific.
  - *The threat is "to the physical health or safety of any student or other individual."* This may be the Complainant, the Respondent, or any other individual.
  - *And the threat "arises from the allegations of Sexual Harassment."* The emergency situation must specifically arise from the allegations of Sexual Harassment.
- **Consideration of the appropriateness of Supportive Measures in lieu of an emergency removal.** Emergency removals should only occur when there are genuine and demonstrated emergency situations.

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<sup>9</sup> If a Respondent's behavior does not arise from the allegations of Sexual Harassment, the Institution may still address the behavior under other policies and processes, such as the Institution's student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution.

- **Providing the Respondent with notice and an immediate opportunity to challenge the emergency removal.** The Respondent's Home Institution will provide the Respondent with a sufficiently detailed notice, notifying the Respondent of the identified emergency threat of physical safety or harm. The Respondent is not entitled to a full evidentiary hearing (as set forth in Section IX.D.) to challenge an emergency removal.

## VIII. Administrative Leave (Employees Only)

An Institution may place a non-student, employee Respondent on administrative leave during the pendency of the Title IX Grievance Process. A student who is also an employee can be placed on administrative leave with respect to their employment, but administrative leave cannot impact their educational access.

An employee can be placed on administrative leave only after a Formal Complaint has been filed against a Respondent and the Title IX Grievance Process has begun. Administrative leave is intended for situations that do not qualify for Emergency Removal as outlined in Section VII.

Each Institution has its own process for administrative leave. The Complainant's Home Institution's Human Resources Professional or Title IX Coordinator will work in coordination with the Respondent's Home Institution Human Resources Professional or Title IX Coordinator to facilitate the administrative leave process.

## IX. Title IX Grievance Process

The Title IX Grievance Process is initiated upon the receipt of a Formal Complaint. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the Education Programs or Activities of TCC within the United States, including as an employee.<sup>10</sup>

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. In these circumstances, the Title IX Coordinator will inform the Complainant of this decision in writing. The correspondence will include notice that the Complainant need not participate in the process further, but will receive all notices issued under this Policy and Title IX Grievance Process.

Nothing in the Title IX Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Throughout the Title IX Grievance Process, the Complainant's and Respondent's Home Institution Title IX Coordinators, as well as the TCC Title IX Administrator, will work closely and cooperatively together. They will maintain open communication during all phases of the Title IX Grievance Process, including the investigation, hearing, and appeal stages.

TCC does not make determinations of responsibility prior to the completion of the Title IX Grievance Process. All evidence gathered will be objectively evaluated. This includes both inculpatory and exculpatory evidence. Credibility determinations will not be made based solely on a person's status as a Complainant, Respondent, or

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<sup>10</sup> For Complainants who do not meet these criteria, the Institution will review the allegations under other existing policies.

witness. Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process.

TCC, not the parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing whether a violation of this Policy has occurred.

## A. General Information

### 1. Standard of Evidence

TCC will utilize a “Preponderance of the Evidence” standard in evaluating all allegations of Sexual Harassment (as defined by this Policy). “Preponderance of the Evidence” means the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not a quantitative, standard.

### 2. Initial Meetings and the Intake Process

**Initial Meetings.** A Complainant may meet with their Home Institution’s Title IX Coordinator for the purposes of discussing their reporting options, Supportive Measures, etc. Below is a summary of the topics the Complainant’s Home Institution’s Title IX Coordinator will address during initial meetings with the Complainant:

- Assistance with care and support resources, medical providers, and law enforcement;
- Supportive Measures;
- Procedures for determining next steps and appropriate resolution process; and,
- Options for participating in an Alternative Resolution or Title IX Grievance Process.

The Title IX Grievance Process is initiated upon receipt of a Formal Complaint.

**Intake Process.** Upon receipt of such a Formal Complaint, the Complainant’s Home Institution’s Title IX Coordinator will engage in the Intake Process, in which they meet with the Complainant, gather preliminary information about the allegation(s), and write the information gathered in an Intake Report. The Intake Process might take place during the Title IX Coordinator’s initial meeting with the Complainant, or it might take place during a subsequent meeting. The Intake Process commences when a Complainant has decided to make a Formal Complaint, and/or when the Institution has been provided sufficient information to proceed with a complaint signed by the Title IX Coordinator.

The Intake Process is not intended to serve as an exhaustive interview, but rather to provide TCC with sufficient contextual information to determine the appropriate next steps to support the Complainant and to guide TCC’s response.

The Complainant’s Home Institution’s Title IX Coordinator will send a copy of the Formal Complaint and Intake Report to the Respondent’s Home Institution’s Title IX Coordinator and the TCC Title IX Administrator.

The Complainant’s and Respondent’s Home Institution Title IX Coordinators will jointly make an initial determination of whether the Title IX Grievance Process is applicable to the Formal Complaint, as outlined in Section IX.B., below.

### 3. Timing

Absent extensions for good cause, the entire Title IX Grievance Process should be completed within 90 to 100 business days from the issuance of the Notice of Allegations to the Respondent(s), which shall occur upon initiation of the Title IX Grievance Process. This includes the investigation, hearing, and any appeal process. A thorough investigation and/or procedurally proper hearing and appeal may necessitate one or more extensions for good cause. Extension requests will be evaluated and denied or granted by the TCC Title IX Administrator. The TCC Title IX Administrator will provide notice to both parties of any timeline extensions.

Failure to complete the Title IX Grievance Process within this time period does not, in and of itself, constitute a procedural error. Any such argument of procedural error (as set forth in Section IX.F.) must also include an explanation as to how the delays materially impacted the outcome of the Title IX Grievance Process.

### 4. Concurrent Criminal Investigations

On occasion, a criminal investigation may be initiated by a law enforcement agency over the same allegations that are reported in a Formal Complaint submitted to TCC. A pending police investigation is a separate investigation and it does not relieve TCC of its responsibility to timely investigate complaints under this Policy. A temporary delay for the length of the fact-finding portion of a criminal investigation may constitute good cause for extending the timeline of TCC's investigation.

### 5. Confidentiality

Parties may share confidential information received through the process with their Support Person and Advisor. TCC shall not restrict the ability of the parties to discuss the allegations under investigation for the purpose of gathering and presenting relevant evidence.

TCC is permitted to share confidential information amongst other Institution representatives who have a reasonable need to know. TCC will endeavor to respect any requests for confidentiality, but will also weigh those requests against TCC's responsibility to maintain a safe environment for its community. Complete confidentiality cannot be guaranteed.

### 6. Right to an Advisor

Parties may elect to be accompanied by an Advisor during meetings and proceedings related to the investigation and hearing process outlined in this Policy. Parties are limited to one Advisor. Parties may be accompanied by a Support Person (see below) in addition to an Advisor. An Advisor can be anyone, including an attorney. The Advisor may not speak on behalf of the party or otherwise disrupt any interviews or proceedings.

Specific guidelines regarding the Advisor role at the hearing are outlined in Section IX.D.7. TCC reserves the right to exclude or remove an Advisor who does not comply with this Policy.

A party does not have to have an Advisor during the investigation process. TCC will not provide any party with an Advisor during the investigation process. However, as outlined below, the party's Home Institution will provide the party with an Advisor during the hearing, if the party has not already obtained an Advisor.

## 7. Support Persons

Parties may elect to be accompanied by a Support Person during the hearing process, in addition to an Advisor. Parties are limited to one Support Person. A Support Person may not be a party or a witness in the case. The Support Person's role is to provide emotional support throughout the process. The Support Person may not speak on behalf of the party or otherwise disrupt any interviews or proceedings. TCC reserves the right to exclude or remove a Support Person who does not comply with this Policy.

## 8. Accepting Responsibility

At any time prior to the commencement of a hearing, a Respondent may waive the right to a hearing and instead accept responsibility for the alleged Policy violation. A Respondent may do so by providing the TCC Title IX Administrator with a signed, written notice, stating the Respondent accepts responsibility for the alleged violation and waives the right to a fact-finding hearing on this issue. If a Respondent accepts responsibility in writing in advance of a hearing, the Complainant and Adjudicator shall be provided a copy of the waiver and a hearing will be conducted only on the question of sanctions. Each party retains all rights with regard to sanctioning.

The parties will be given an opportunity to be heard at the sanctions hearing, including but not limited to the submission of impact statements. The parties may be accompanied by their Advisors, but questioning of parties or witnesses by Advisors will not be permitted. The parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described in Section IX.F.

## 9. Closure

Not all reports of alleged Sexual Harassment constitute a report of prohibited conduct that may be resolved through this Policy.

TCC must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined above, even if proved; and/or,
- The conduct did not occur in an educational program or activity controlled by TCC (including buildings or properties controlled by officially recognized student organizations); and/or,
- The alleged conduct did not occur against a person in the United States; and/or,
- At the time of filing a Formal Complaint, a Complainant was not participating in or attempting to participate in an education program or activity of TCC.

Additionally, TCC may close and dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- A Complainant notifies their Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or,

- It is determined that the Respondent is no longer enrolled in or employed by TCC; or,
- Specific circumstances prevent TCC from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A decision to close a matter based on any of the above-listed factors is made at the discretion of the TCC Title IX Administrator.

Upon termination of the process, the TCC Title IX Administrator will provide written notice to the parties describing the reason for the dismissal. The Respondent's Home Institution may continue to investigate the allegations as a potential violation of another policy. If the Respondent's Home Institution elects to continue the investigation outside of this Policy, the TCC Title IX Administrator shall provide written notice to the parties describing the determination.

The dismissal determination is appealable by any party under the procedures for appeal outlined in Section IX.F. The decision not to dismiss is also appealable by any party claiming a dismissal is required or appropriate.

A Complainant who decides to withdraw a complaint may later request to reinstate or refile the complaint.

#### 10. Amnesty

Any individual (including a witness or a third party) who shares information in the interest of any individual's health and safety will not be subject to disciplinary action by TCC for student conduct policy violations that occur around the time of the alleged prohibited conduct, including their own personal consumption of alcohol or other drugs at or near the time of any incident, provided they did not harm another or place the health or safety of any other person, or the community, at risk. TCC may suggest an educational conference where support, resources, and educational counseling options may be discussed and potentially required with a learning action plan for an individual who has engaged in the illegal or prohibited use of alcohol or drugs.

#### 11. Consolidation of Formal Complaints and Allegations

TCC may consolidate Formal Complaints under two circumstances:

- Where there is a complaint involving more than one Complainant and/or Respondent, stemming from the same facts or circumstances; or,
- Where a cross-complaint has been filed by a Respondent against a Complainant.

A decision to consolidate matters based on any of the above-listed factors is made at the discretion of the TCC Title IX Administrator in consultation with the parties' Home Campus Title IX Coordinator(s). If the TCC Title IX Administrator determines consolidation is appropriate, they must send notice to all involved parties.

Where allegations made in a Formal Complaint include both conduct that falls under this Policy and conduct that is outside of this Policy but is interrelated to Policy-covered conduct, the allegations may be joined. If the allegations under this Policy and under an Institution's other policies are joined, during the hearing direct cross-examination by a Party's Advisor will be limited to questions relating to the allegation of conduct falling under this Policy. Determinations as to when a question is appropriate to be posed by a party's Advisor or through the Hearing Officer shall be made at the sole discretion of the Hearing Officer.

## 12. Interpretation

This Policy is intended to be self-explanatory. The Adjudicator (defined in Section IX.D.2) is responsible for interpretation of policy definitions of prohibited conduct. Should a disagreement arise over interpretation of another area of this Policy, exclusive authority to interpret the Policy lies with the TCC Title IX Administrator. Any such interpretation shall be final. In reaching a final interpretation, the TCC Title IX Administrator shall consult with the Title IX Coordinators, unless not feasible or practicable.

### B. Step One: Initiation of the Title IX Grievance Process

The Complainant's and Respondent's Home Institution Title IX Coordinators will jointly make an initial determination of whether the Title IX Grievance Process is applicable to the Formal Complaint. The Title IX Coordinators will make a reasonable determination as to whether or not the following elements are met:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in TCC's Education Programs or Activities; and,
4. The alleged conduct, if true, would constitute Sexual Harassment, as defined in this Policy.

If the Title IX Coordinators disagree whether these elements are met, the Title IX Coordinators agree to confer with the TCC Title IX Administrator, who will make the final determination.

If it is determined all of the elements are met (either through consensus by the Title IX Coordinators or review by the TCC Title IX Administrator), TCC will initiate the Title IX Grievance Process.

**Initiation of the Title IX Grievance Process.** If it is determined (through the process above) that the Formal Complaint will proceed under this Policy, the TCC Title IX Administrator will initiate the Title IX Grievance Process.<sup>11</sup>

When a Formal Complaint is filed, the TCC Title IX Administrator will notify the parties of their option to participate in the Alternative Resolution Process (see Section IX.H). If either party declines to participate in the Alternative Resolution Process, the Title IX Grievance Process will proceed, as set forth in this Section.

In instances where a Formal Complaint is signed by the Title IX Coordinator, the person alleged to be harmed (the Complainant) will still retain all rights of a Complainant in this process, if they should choose to exercise them, including the choice to participate or not participate at any step of the process and in receiving notification of the outcome.

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<sup>11</sup> If the conduct alleged would not meet the definition of Sexual Harassment, even if sustained, the Title IX process will be terminated. However, the conduct may continue to be investigated under other policies and processes, such as those under the Institution's student codes of conduct, civil rights policies, discrimination and harassment policies, and/or any other applicable policy adopted by an individual Institution.

Finally, in instances where it is determined a Formal Complaint will not proceed under this Policy, the parties may appeal the determination using the procedures outlined in Section IX.F.

### 1. Notice of Allegations

Once an investigation has been initiated, the TCC Title IX Administrator will send a written notice to both parties, which will include:

- The identities of the parties (if known);
- A summary of the alleged conduct, including the date(s), time(s), and location(s) of incident(s) (if known);
- Policy sections alleged to be violated by the conduct;
- An outline of the Title IX Grievance Process, including any available Alternative Resolution Processes;
- A statement that Respondent is presumed not responsible until a determination of responsibility is made following the investigation and hearing;
- A statement that TCC will not make a determination of responsibility until the conclusion of the Title IX Grievance Process;
- A notice regarding whether interviews will be recorded, and that only the Investigator is permitted to record interviews;
- A description of the parties' opportunities to present, inspect, and review evidence;
- A statement that the parties may have an Advisor of their choice, who is permitted to be an attorney;
- A statement that the parties may have a Support Person of their choice;
- A statement urging the parties to maintain discretion as to the details of the matter, both in recognition of the sensitive nature of the matter, and to ensure they do not influence other individuals' statements;
- A summary of the hearing process and a statement that the Hearing Decision will make factual and policy findings regarding the allegations;
- A statement that findings will be based on a Preponderance of the Evidence Standard;
- A notice admonishing the parties against Retaliation; and,
- A notice informing the parties they are prohibited from making false statements or knowingly submitting false information based on the Institution's conduct codes.

The Notice of Allegations shall be amended any time during the investigation to include additional allegations of Policy violations identified during the investigation. An amended Notice of Allegations should include all required information described above.



## C. Step Two: Investigation Process

### 1. Designation of the Investigator

The TCC Title IX Administrator, in consultation with the parties' Home Institution's Title IX Coordinators, will designate an Investigator to conduct a fair, thorough, and impartial investigation. If either party believes the assigned Investigator has an actual conflict of interest or bias, they should immediately notify the TCC Title IX Administrator. The TCC Title IX Administrator will consider and resolve any objections to the selection of an Investigator.

The Investigator will have had appropriate training in the definitions of Sexual Harassment, bias, the scope of TCC's education programs and activities, the investigation and hearing processes, the Alternative Resolution Process, and investigative report writing.

### 2. Investigation

Both parties will be provided equal opportunity to meet with the Investigator, submit evidence, and identify relevant witnesses. The Investigator will meet separately with the Complainant, Respondent, and witnesses. The Investigator has discretion regarding which witnesses to interview and when to conduct follow-up interviews with parties and witnesses.

The Investigator will prepare a written summary of each interview and send the same to the witness or party for a review of accuracy. Unless the individual requests additional time, the written summary will be deemed accurate if the individual does not provide feedback on the written summary within two (2) business days of the Investigator emailing it to the individual.

The Investigator will take reasonable steps to gather relevant available evidence. The Investigator may exclude evidence they determine to be irrelevant or immaterial. Parties may provide the Investigator with any evidence they believe to be relevant, including expert and polygraph evidence. It is ultimately the role of the Adjudicator (Section IX.D.) to determine what weight, if any, to give to the evidence gathered. The Investigator will not consider evidence which requires seeking information protected by a legally recognized privilege, unless the person holding the privilege has waived the privilege.

TCC shall not restrict the ability of the parties to discuss the allegations under investigation for the purpose of gathering and presenting relevant evidence.

The Investigator may gather information related to prior or subsequent conduct of the Respondent in determining pattern, knowledge, intent, motive, or absence of mistake.

The Investigator will not gather evidence or ask questions related to the parties' sexual predisposition or prior sexual behavior unless:

- The evidence and/or questions are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant;
- They concern specific incidents of the Complainant's or Respondent's prior sexual behavior with respect to one another and are offered to prove or disprove consent (with the understanding that consent to

any one form of sexual activity does not automatically imply consent to any other forms of sexual activity and that previous relationships or prior consent does not imply consent to future sexual acts);

- The sexual history is relevant to explain an injury; and/or,
- The sexual history is relevant to show a pattern of behavior.

The Investigator will not gather sexual history as it pertains to a party's reputation or character.

Prior to any meeting, including an investigative interview meeting with a party, the Investigator shall provide the party with written notice of the date, time, location, participants, and purpose of the meeting. The Investigator shall provide the written notice with sufficient time for the party to prepare for the meeting. An Advisor and a Support Person may accompany a party to every meeting.

### 3. Recording

TCC may elect to electronically record investigative interviews. The Investigator may only record investigative interviews with the consent of each individual being recorded. TCC will retain any recordings it has made as the only authorized recording of the interviews. A recorded party may request to review the transcript or audio of their interview in-person and under supervision by a TCC representative. A party may request to review the transcript of the other party's interview in-person and under supervision by a TCC representative.

Investigation recordings will be maintained for seven (7) years after the conclusion of the Title IX Grievance Process, the Respondent's graduation, separation from TCC, or separation from Institutional employment, whichever is latest.<sup>12</sup>

### 4. Evidence Review

Before issuing the final Investigation Report, the TCC Title IX Administrator will provide a preliminary Investigation Report to the parties, and provide the parties with an equal opportunity to respond to the relevant evidence, including allowing parties to present additional relevant evidence or information. This is known as the Evidence Review Process. This opportunity should be provided to each party regardless of whether the party participated in the investigation. Absent good cause, parties are provided with ten (10) business days to review and respond to the evidence.

The TCC Title IX Administrator will have discretion to determine how to provide access to the preliminary Investigation Report to the parties based on the particular circumstances of the case and any party or witness privacy concerns. Neither Complainant, Respondent, nor anyone on either party's behalf may copy, remove, photograph, print, record, or in any other manner duplicate the information contained in the preliminary Investigation Report (unless a party is describing the material in a written response to the evidence).

As part of this Evidence Review Process, the parties may submit proposed questions for the Investigator to ask of the other party or any witness, request additional interviews and information-gathering, and/or suggest additional witnesses. The Investigator has discretion to determine if the responses warrant additional information-gathering. If the Investigator determines it is unnecessary to ask individuals additional questions,

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<sup>12</sup> Interviews that take place via videoconference, and are recorded, may include both an audio and visual recording. Both recordings shall be retained in the same manner as other grievance materials, in accordance with Section X.

interview new witnesses, and/or gather additional evidence, the Investigator will explain their decision in the final Investigation Report.

If additional evidence is provided, the parties submit a written response to the evidence, or new evidence is gathered, it will be included in either a revised preliminary Investigation Report or a separate addendum, as deemed appropriate by the Investigator. Both parties will be provided a reasonable opportunity to review and respond to any new evidence. The Investigator will determine when it is appropriate to conclude the Evidence Review Process. The TCC Title IX Administrator will notify the parties when the Evidence Review Process is complete and the Investigation Report is finalized.

## 5. Final Investigation Report

At the conclusion of the Evidence Review Process, the Investigator will prepare a final written Investigation Report that includes:

- The identities of the parties;
- The identities of the witnesses;
- The dates of conducted interviews;
- A summary of the allegations;
- The policy alleged to be violated by the conduct;
- A summary of the investigation process;
- The relevant statements of the parties and witnesses;
- A summary of the relevant evidence gathered by the Investigator;
- A description of the relevant, material undisputed facts;
- A description of the relevant, material disputed facts;
- A statement describing how and when the parties were given the opportunity to review the evidence; and,
- Explanations for why evidence or witnesses submitted by the parties were not considered.

The Investigation Report will not include findings of fact, findings of policy, or credibility determinations for parties or witnesses (other than to note when credibility is not disputed).

The TCC Title IX Administrator will provide the parties with a final copy of the Investigation Report, including all attachments, at least ten (10) days prior to a hearing. The parties may submit a written response to the final Investigation Report. Written responses are incorporated into the materials that can be reviewed and considered by the Adjudicator. Each party will receive a copy of the other party's written response to the Investigation Report.

#### D. Step Three: Hearing

Upon receipt of the final Investigation Report, the TCC Title IX Administrator will evaluate the evidence gathered and determine if the Title IX Grievance Process is still applicable to the Formal Complaint. The TCC Title IX Administrator will consider if the following elements are met:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in TCC's education program or activity; and,
4. The alleged conduct, if true, would constitute Sexual Harassment, as defined in this Policy.

If the TCC Title IX Administrator determines that the required elements are met, the matter shall proceed to a hearing. A hearing will be held in which an Adjudicator will make credibility determinations, findings of fact on disputed facts, and findings of policy on the relevant Policy the Respondent is alleged to have violated. In reaching findings, the Adjudicator may consider the final Investigation Report, all evidence gathered by the Investigator, and testimony provided at the hearing.

Individuals may choose not to participate in the hearing. If any individual – Complainant, Respondent, and/or witnesses – chooses not to participate in the hearing, the Adjudicator may not consider any statement made by the individual to the Investigator. Parties (Complainants and Respondents) may also choose to attend the hearing and not answer questions. The Adjudicator will not draw any adverse inference solely from an individual's decision to not participate in the hearing, although this decision may impact the information available to the Adjudicator in reaching their decision. However, the Adjudicator may draw adverse inferences if an individual selectively participates in the hearing (for example, answering some questions but declining to answer others).

The hearing is a closed proceeding and will not be open to the public. The witnesses will only be present in the hearing for the duration of their testimony.

The Adjudicator will permit breaks, as needed, throughout the hearing. All participants in the hearing will behave in a respectful manner, as outlined in TCC's Rules of Decorum. The Rules of Decorum will be shared with the parties, their Advisors, and Support Persons prior to the hearing. The Adjudicator has the discretion to remove any participant or observer who is not conducting themselves according to the Rules of Decorum.

TCC expects the parties will wish TCC to share documentation related to the allegations with their Support Person and/or Advisor. TCC provides a FERPA release form that authorizes such sharing and participation. The parties must complete this form before TCC is able to share records with a Support Person and/or Advisor. Parties must also complete this form before the commencement of the hearing. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Support Persons and/or Advisors are expected to maintain the privacy of the records shared with them by TCC. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by TCC. TCC may seek to restrict the role of any Support Person

and/or Advisor who does not respect the sensitive nature of the process or who fails to abide by TCC's privacy expectations.

### 1. Hearing Coordinator

The TCC Title IX Administrator will be responsible for designating a Hearing Coordinator who will coordinate the hearing process. The Hearing Coordinator will ensure the Adjudicator is provided with all necessary materials, including the Investigation Report and attachments, as well as any party's written responses to the final Investigation Report. The Hearing Coordinator will also arrange a location for the hearing and coordinate a date and time for the hearing.

The Hearing Coordinator will act as a liaison between the parties and the Adjudicator on all procedural matters.

### 2. Designation of Adjudicator

The TCC Title IX Administrator, in consultation with the parties' Home Institution's Title IX Coordinators, will designate an Adjudicator, distinct from the Hearing Coordinator and any Title IX Coordinator, who will preside over the hearing and draft the Hearing Decision. The Adjudicator is a single individual, either internal or external to TCC. The Adjudicator is responsible for overseeing the hearing, making procedural determinations, managing the questioning process, and issuing the Hearing Decision.

The Adjudicator will have had appropriate training in the definitions of Sexual Harassment, the scope of TCC's education programs and activities, the investigation and hearing processes, bias, the Alternative Resolution Process, and hearing decision writing.

Additionally, the Adjudicator will be trained on the following:

- Any technology to be used at the hearing; and,
- 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.

The Hearing Coordinator will provide the parties with written notice of the Adjudicator's identity. If either party believes the assigned Adjudicator has an actual conflict of interest or bias, they should immediately notify the TCC Title IX Administrator. The TCC Title IX Administrator will consider and resolve any objections to the selection of an Adjudicator.

### 3. Witnesses

The Adjudicator has ultimate discretion to call witnesses and may determine not to call witnesses submitted by the parties, and/or to call witnesses who were not submitted by the parties. The Adjudicator will communicate to the Hearing Coordinator the witnesses they have determined should be called for the hearing, what their expected relevant testimony will be, and their explanations for determining not to call witnesses submitted by the parties if they make such determinations.

The Hearing Coordinator will request the attendance of all the witnesses whose testimony the Adjudicator determined was within the hearing scope. The Hearing Coordinator will coordinate to have the Investigator present at the hearing for questions regarding the Investigation and the Investigation Report.

TCC cannot compel parties or witnesses (with the exception of the Investigator) to testify in the hearing. Any witness' decision not to participate will not be a reason to cancel or postpone a hearing. Investigators who are current employees of TCC are expected to participate in the hearing, if requested. Non-employee Investigators, including Investigators who have left employment with TCC, can be requested, but cannot be compelled, to participate in the hearing.

The Complainant's and Respondent's Home Institution's Title IX Coordinators can be present in a silent role during the entirety of the hearing.

#### 4. Hearing Notice

At least five (5) business days prior to the scheduled hearing, the Hearing Coordinator shall send the parties written notice of the hearing. The written notice will include the following information:

- The identity of the Adjudicator;
- The time, date, and location of the hearing, including if the hearing will be conducted entirely via videoconference;
- The identity of all parties participating in the hearing, including witnesses approved by the Adjudicator;
- A list of all documents the Adjudicator may consider in reaching their determination;
- TCC's Live Hearing Expectations; and,
- A general overview of the hearing process.

#### 5. Recording

The Hearing Coordinator is responsible for ensuring the hearing is audio recorded.<sup>13</sup> TCC shall retain the recording as the only authorized recording of the hearing. A recorded party may request to review the transcript or audio of the hearing in-person and under supervision by a TCC representative.

Hearing recordings will be maintained for seven (7) years after the conclusion of the Title IX Grievance Process, the Respondent's graduation, separation from TCC, or separation from Institutional employment, whichever is latest.

#### 6. Separation of Parties

Hearings may be conducted with any or all parties, witnesses, and other participants appearing virtually, with technology enabling participants to simultaneously see and hear one another, or with parties physically present in the same geographic location.

As standard practice, the parties will be physically separated during the hearing and participate virtually unless both parties request otherwise. The Adjudicator is responsible for making a final decision about the location of the parties during the hearing.

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<sup>13</sup> Hearings that take place via videoconference may include both an audio and visual recording. Both recordings shall be retained in the same manner as other grievance materials, in accordance with Section X.

## 7. Hearing Questioning and Role of the Advisor

The Adjudicator will determine the order of questioning at the hearing. The Adjudicator may change the order of questioning, with appropriate verbal notice to the parties, if the Adjudicator determines a change is necessary to accommodate a witness' schedule, or for other procedural reasons. The Adjudicator may ask questions at any time of any party providing testimony during the hearing.

The Adjudicator will permit each party's Advisor to ask the other party or parties and any witnesses relevant questions, including questions challenging credibility. This questioning will be conducted directly, orally, and in real-time by the party's Advisor and never by a party personally. The questions must be relevant to the hearing scope, not be repetitive of information already gathered, and/or not be harassing of any individual providing testimony.<sup>14</sup> The Adjudicator will evaluate each question asked. If the Adjudicator determines the question should not be asked, the Adjudicator will direct the party/witness not to answer the question and state their reasoning for this determination on the record. The Adjudicator also has the authority to pause questioning by an Advisor at any time to ask follow-up questions, or as otherwise deemed necessary. All determinations made by the Adjudicator are final, including determinations on questioning.

Should a party choose not to question a party or witness, the party shall affirmatively waive their right to question through a written or oral statement to the Adjudicator either before or during the hearing. A party's waiver of their right to question an individual providing testimony does not eliminate the ability of the Adjudicator to consider the testifying individual's statements made during the hearing and/or to the Investigator.

Parties are expected to notify the Hearing Coordinator of the identity of their Advisor and Support Person in advance of the Hearing. The Hearing Coordinator will share this information with the other party.

Parties are required to have an Advisor present during the hearing, even if the party does not wish to ask questions of any individual testifying. If a party does not have an Advisor at the commencement of the hearing, that party's Home Institution will provide the party with an Advisor trained in the hearing process and in the development and posing of relevant questions. The party must utilize the Advisor provided by their Home Institution for purposes of questioning during the hearing.

If parties know they will not have their own Advisor at the hearing, they are encouraged to notify the Hearing Coordinator of this fact as soon as possible.

If a party does not participate in, or attend, the hearing, their Advisor may still appear at the hearing and ask questions of the other party(ies) and witnesses.

Absent their role in questioning, Advisors will remain silent during the hearing. They may not answer questions on behalf of any party, nor may they make closing statements on behalf of any party.

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<sup>14</sup> If the Hearing involves allegations of conduct falling outside this Policy, the party's Advisor may only directly ask questions of the other party or parties or witnesses that relate to the conduct falling under this Policy. The party's Advisor may propose questions related to other, non-covered Policy conduct, by submitting them in writing to the Hearing Officer. The Hearing Officer will evaluate the questions and ask the questions they deem relevant, non-repetitive, and non-harassing.

All participants at the hearing will behave in a respectful manner. The Adjudicator has discretion to remove any participant or observer who is not conducting themselves in a manner conducive to a fair, safe, and orderly hearing.

#### 8. Party Mitigation and Impact Statements

Within five (5) business days after the last day of the hearing, the parties may provide to the TCC Title IX Administrator written statements related to potential sanctions. Specifically, parties may submit a written impact and/or mitigation statement.

If the Adjudicator determines there was a violation of Policy, the Adjudicator will notify the TCC Title IX Administrator before issuing their Hearing Decision. The TCC Title IX Administrator will provide the Adjudicator with copies of the party statements, in accordance with Section IX.E. The TCC Title IX Administrator will also provide copies of the statements to the parties' Home Institution Title IX Coordinators. If the Adjudicator determines there was not a violation of Policy, the TCC Title IX Administrator will not release the party statements to the Adjudicator.

#### 9. Hearing Decision

The Adjudicator will consider the investigation record, including the Investigation Report and attachments, and the evidence accepted at the hearing in drafting their Hearing Decision. The Adjudicator will use a preponderance of the evidence standard to determine whether a Policy violation occurred. The Adjudicator will make their own findings and credibility determinations based on a preponderance of the evidence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>15</sup> The Adjudicator will not draw an inference regarding a person's decision not to participate in the hearing, nor will they draw an inference regarding a person's decision not to answer questions posed during the hearing. However, the Adjudicator may consider a person's selective participation during the hearing in assessing credibility. Selective participation, for purposes of this Policy, means a party chooses to answer some questions and declines to answer others.

If the Adjudicator finds a violation of Policy, the Adjudicator and TCC shall follow the procedures set forth in Section IX.E. – Sanctioning.

If the Adjudicator does not find a violation of Policy (and the Appeal process, as outlined in Section IX.F has concluded), the Adjudicator will finalize the Hearing Decision and submit the Hearing Decision to the TCC Title IX Administrator.<sup>16</sup>

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<sup>15</sup> The sentence removed from the Policy set specific parameters on what an Adjudicator could not consider related to party and witness statements. Those parameters were mandated by a provision of the Final Rule. On July 28, 2021, a federal court district court ruled the provision mandating the now-removed sentence was "arbitrary and capricious." On August 24, 2021, the Department of Education released guidance, notifying institutions that the Department will cease enforcement of that particular provision of the Final Rule and that postsecondary institutions are no longer subject to the provision. In accordance with Section XIII of this Policy, the language was struck.

<sup>16</sup> If there is no finding of a Policy violation, no sanctions will be issued.



The final Hearing Decision will include the following:

- The allegations allegedly constituting Sexual Harassment, as defined by this Policy;
- A description of the procedural steps taken from receipt of the Formal Complaint through the determination;
- Findings of fact;
- Policy findings;
- Rationale for each finding;
- Sanctioning determination (if applicable); and,
- Rationale for the sanctioning determination (if applicable).

Within fifteen (15) business days of the hearing, the TCC Title IX Administrator will send written notice to both parties of the Adjudicator's policy and sanctioning determinations. The TCC Title IX Administrator will include a copy of the Adjudicator's decision.

The TCC Title IX Administrator will explain the Appeal Process, including the permissible bases for appeal, in their written notice to the parties. The Adjudicator's determination becomes final on the date on which an appeal would no longer be considered timely (see Section IX.F.).

For potential enhancements to sanctions, occurring when a Respondent has instances of prior conduct, please see Section IX.G.

#### E. Step Four: Sanctioning

This section sets forth the procedures to be followed should the Adjudicator find that a Policy violation(s) occurred. This section applies to instances involving both student and employee Respondents.

In cases involving employee Respondents, the TCC Title IX Administrator will refer the matter to the Title IX Coordinator of Respondent's Institution for sanctions and appeals.

In cases involving student Respondents, if the Adjudicator determines there was a Policy violation, the Adjudicator will notify the TCC Title IX Administrator. The TCC Title IX Administrator will take two steps:

- They will notify the Title IX Coordinator and the appropriate Administrator of each parties' Home Institution. The parties' Home Institutions may submit written recommendations related to sanctions. The parties' Home Institutions will provide those recommendations to the TCC Title IX Administrator, who will transmit them to the Adjudicator; and,
- They will provide the Adjudicator with any written party statements, as set forth in Section IX.D.8. If the parties did not provide written statements in accordance with Section IX.D.8., above, they will not be provided an additional opportunity to submit a written statement to the Adjudicator.

The Adjudicator will decide if remedies are appropriate in order to restore or preserve equal access to the party's education and/or employment. Such remedies may include the same individualized services described

as “Supportive Measures.” However, unlike Supportive Measures, remedies need not be non-disciplinary or non-punitive, and need not avoid burdening the Respondent.

The Adjudicator will make a sanctioning determination based on the factual and Policy findings, written party statements, written Institution recommendations, and other factors relevant to sanctioning. The Adjudicator shall give significant weight to the written Institution recommendations in issuing a sanction. The factors an Adjudicator may consider include, but are not limited to:

**Severity of the violation:** The duration of the conduct; whether the conduct was repeated; the number of Policy violations; abuse of power; use of intimidation; use of force; level of endangerment to the Complainant; level of injury to the Complainant; presence of a weapon; deliberate embarrassment; exploitation of level of intoxication

**Aggravation:** Whether the Respondent used force, threat, violence, duress, or intentionally caused intoxication to engage in conduct without Complainant’s consent.

**Intent:** Whether Respondent intended to cause harm; whether Respondent premeditated the conduct; whether Respondent pressured others to engage in the conduct or similar conduct; whether Respondent was pressured by others to engage in the conduct.

**Retaliation:** Whether Respondent complied with No Contact Orders and other interim measures in place during the investigation and hearing process; whether Respondent engaged in conduct meant to intimidate or harass participants for their participation in the investigation or hearing process; whether Respondent was forthcoming during the investigation and hearing process; whether Respondent engaged in any other conduct which would obstruct the investigation or hearing process, or impacted the fairness of the processes.

**Impact:** The impact of Respondent’s conduct and presence on the Complainant’s safety and participation in TCC’s programs; the impact of Respondent’s conduct on TCC’s community; the impact of sanctions on Respondent’s access to participation in TCC’s programs.

Possible sanctions are as follows:

**Warning:** Written notice that the Respondent’s behavior was in violation of TCC Policy and that future violations will result in more severe sanctions.

**Restitution:** Reimbursement by the Respondent(s) to the Institution, another Claremont College, TCC, the Complainant(s), or a member of TCC’s community to cover the cost of property damage or other loss.

**Service Hours:** A set number of work hours the Respondent must complete. The Title IX Coordinator will determine the nature of the work to be performed. Generally, service hours are conducted within TCC.

**Educational Program/Project:** Programs and activities designed to help the Respondent become more aware of Institution policies and help the Respondent understand the inappropriateness of their behavior, including, but not limited to, participation in an educational program or completion of an online program.

**Referral for Assessment:** A referral for an assessment with an appropriately trained therapist who will recommend a process for treatment. Reinstatement is conditioned upon receiving proof of completion of the recommended treatment.

**Loss of Privileges:** Denial of specific privilege(s) for a defined period of time. Privileges include, but are not limited to, participation in extracurricular activities and events such as social events, intercollegiate athletics, intramural programs, student organizations, and student government, as well as the privilege of living on campus, living in a specific residence hall, participation in commencement ceremonies, or having a vehicle on campus.

**Restricted Access:** Conditions which specifically dictate and limit the Respondent's presence on campus and/or participation in Institution-sponsored activities. The restrictions will be clearly defined and may include, but are not limited to, presence in certain buildings or locations on campus or a No Contact Order. In cases involving parties from different Claremont Colleges, restricted access may extend to exclusion from another Institution's campus.

**Removal of Offending Cause:** Requirement to remove the item which was the subject of the complaint.

**Relocation or Removal from Residence Halls:** Requirement that the Respondent relocate to another residence hall, or off-campus residence, by a specified date.

**Probation:** Formal, written notice that the Respondent's behavior is in violation of Institution Policies and an expectation that the Respondent exhibit good behavior for a defined period of time. Any violation during the probationary period will be referred back to the Respondent's Home Institution for appropriate review and response. Notice of Conduct Probation is sent to the Respondent's academic advisor as well as to the Respondent's parent(s)/guardian if the Respondent is a minor.

**Employment Probation:** Formal, written notice that the employee's conduct is in violation of Institution Policies and an expectation that the employee exhibit good behavior for a defined period of time. Any further violations during the probationary period will result in increased sanctioning and may result in employment suspension without pay or termination of employment.

**Suspension of One, Two, Three, Four, Five, Six, Seven, or Eight Semesters:** Separation from the Institution for one, two, three, four, five, six, seven, or eight semesters. During the suspension period, the Respondent is not permitted on campus, is not permitted to participate in any Institution-sponsored or affiliated program or activity, and is not permitted to earn any credits towards the Respondent's degree. The terms of the suspension may include the designation of special conditions affecting eligibility for re-enrollment or special conditions to be in effect upon re-enrollment, including a term of Conduct Probation.

**Suspension without Pay (staff and faculty):** Separation of employment for a defined period of time without pay for the time of separation.

**Employment Termination:** Permanent separation of the employee from their position. If the Respondent is a student, they may be permanently separated from their student position. A staff or faculty member who is terminated from their employment is not permitted to participate in any Institution-sponsored or affiliated program or activity.

**Expulsion:** Permanent separation from the Institution. A Respondent who has been expelled is not permitted on campus and is not permitted to participate in any Institution-sponsored or affiliated program or activity.

For student Respondents, the Respondent's Home Institution's Title IX Coordinator is responsible for ensuring completion of the sanction. For employee Respondents, the Respondent's Home Institution's designated official is responsible for ensuring completion of the sanction.

## F. Step Five: Appeal Rights

A Complainant or Respondent who is not satisfied with the determinations made as to closure of a Formal Complaint under this Policy and/or the Policy findings or sanctions imposed at the completion of the hearing process may submit an appeal to the TCC Title IX Administrator. The TCC Title IX Administrator, in consultation with the parties' Home Institution's Title IX Coordinators, will identify an appropriately trained Appeal Authority to review and make a determination of the appeal(s).

When the TCC Title IX Administrator identifies an Appeal Authority, they will provide written notice of the individual's identity to the parties. If either party believes the assigned Appeal Authority has an actual conflict of interest or bias, they should immediately notify the TCC Title IX Administrator. The TCC Title IX Administrator will consider and resolve any objections to the selection of an Appeal Authority.

Appeals must be submitted within five (5) business days of the Notice of the Hearing Decision (or the Notice of Case Dismissal) to the TCC Title IX Administrator. The appeal must specify which grounds the appeal is based upon and include any arguments the party wishes to make in support of their appeal.

### 1. Appeal Grounds

Each party has a right to appeal:

- The dismissal of a formal complaint or any included allegations;
- A determination regarding responsibility; and/or,
- Any sanctions.

To appeal, a party must electronically submit their written appeal to the TCC Title IX Administrator within five (5) business days of the notice of the decision being appealed. The appeal must state the grounds for the appeal.

A party may appeal based on one or more of the following grounds:

**Procedural Error:** There was a procedural error(s) which materially affected the outcome of the matter (i.e., failure to follow the process outlined in this Policy). The appealing party must describe in their appeal how the procedural error impacted the outcome.

**Conflict of Interest:** The Title IX Coordinator, TCC Title IX Administrator, Investigator(s), and/or Adjudicator(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter. The appealing party

must describe in their appeal the alleged conflict of interest or bias held by the individual and how this altered or impacted the outcome.

**New Evidence:** There is new evidence which was not available or known (and could not have reasonably been known) at the time of the final determination which materially affected the outcome of the process. The appealing party must describe in their appeal how the new evidence would have altered the outcome of the process and why the new evidence was not available or reasonably known prior to the appeal.

**Disproportionate Sanctions:** The sanctions are disproportionate to the Adjudicator's findings.

The submission of an appeal pauses the implementation of any sanctions during the pendency of the appeal(s). Supportive Measures remain available during the appeal process.

## 2. Appeal Authority

As noted above, the TCC Title IX Administrator will designate an appropriate Appeal Authority to conduct a prompt, thorough, and impartial review of the appeal. The Appeal Authority will not be the same person as the Adjudicator, Investigator, TCC Title IX Administrator, or the Title IX Coordinator from either parties' Home Institution.

The Appeal Authority will have had appropriate training in the definitions of Sexual Harassment and sexual misconduct, bias, the scope of TCC's education programs and activities, the investigation and hearing processes, the Alternative Resolution Process, and appeal decision writing.

## 3. Appeal Response

The TCC Title IX Administrator will send a written notice of the appeal to the non-appealing party and provide them with a copy of the appeal. The non-appealing party may issue a response to the appeal. The appeal response is limited to ten (10) pages, including attachments, and may address only the issues raised in the appeal. The non-appealing party will have five (5) business days to submit their appeal response after receiving the notice of the appeal.

## 4. Appeal Clarification

If the Appeal Authority needs clarification on any point raised in the appeal, they may make a written request for clarification from the appealing party, through the TCC Title IX Administrator. The appealing party may respond in writing. The TCC Title IX Administrator will transmit the written communications to the Appeal Authority. The Appeal Authority may not communicate directly with either party. The TCC Title IX Administrator will provide copies of the written communications to the non-appealing party and to the parties' Home Institution Title IX Coordinators.

## 5. Appeal Record

The review of an appeal will not involve any additional investigation by the Appeal Authority. The review will be based upon evidence introduced during the investigation process and presented at the hearing, as well as the arguments made during the appeal process. The Appeal Authority will not consider new evidence for the

purposes of upholding, overturning, or modifying the findings. Appeals submitted under the ground of new evidence will be considered only to determine whether the new evidence could likely change the determination of responsibility.

## 6. Appeal Decision

The Appeal Authority will draft a written report which summarizes their decision regarding the appeal. The Appeal Decision will include a description of the ground(s) for the appeal, a summary of the issues raised on appeal, a statement regarding the evidence considered, a statement describing the decision was made based on the preponderance of the evidence standard, and the determination regarding the appeal.

The Appeal Authority may decide to do the following:

- Uphold the findings and sanctions;
- Overturn the findings and/or sanctions;
- Modify the findings and/or sanctions; or,
- Remand the case for a second hearing based on new evidence which could likely affect the outcome of the matter.

## 7. Notice of the Appeal Decision

The TCC Title IX Administrator will send written notice of the Appeal Decision to both parties within ten (10) business days of the submission of an appeal response from the non-appealing party (or the deadline for the non-appealing party to submit a response). The Notice of the Appeal Decision will include a copy of the written Appeal Decision. The notice will inform the parties there is no further review of the matter, no further right to appeal, and that the matter is closed.

The determination regarding responsibility and sanctioning becomes final on the date of the Appeal Decision, unless the Appeal Decision determines further investigation and an additional hearing is necessary based on new evidence discovered.

## G. Final Sanctioning Determination

After the issuance of the final decision (the Hearing Decision if there is no appeal, or the Appeal Decision), the TCC Title IX Administrator will send matters involving findings of Policy violation(s) to the Dean of Students or designated official within the Respondent's Home Institution. The Dean of Students or designated official will review the issued sanctions and determine if any enhancements are warranted based on a Respondent's disciplinary history. Enhancements based on a prior disciplinary history are not shared with the other party.

For student Respondents, the Respondent's Home Institution's Title IX Coordinator is responsible for ensuring completion of the sanction(s). For employee Respondents, the Respondent's Home Institution's designated official is responsible for ensuring completion of the sanction(s).

## H. Alternative Resolution Process

TCC recognizes some parties may want resolution of their matter through an Alternative Resolution Process, instead of through the Title IX Grievance Process. Accordingly, parties can mutually agree to resolve a complaint through an Alternative Resolution Process, instead of undergoing the Title IX Grievance Process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording parties an opportunity to actively participate in a process led by their Home Institution for resolution of their complaints.

Alternative Resolution is not available in situations involving a student Complainant and an employee Respondent(s). Any allegation of Sexual Harassment made by a student against an employee must proceed under the Title IX Grievance Process. Alternative Resolution is available when there is a student Respondent and/or when both involved parties are employees.

The parties may, in writing, elect to enter TCC's Alternative Resolution Process. This will include a statement that any agreement reached through the process is binding on the parties. This will also include a statement that the parties understand the Alternative Resolution Process will not result in a notation on either party's disciplinary record.

No party may be required to participate in Alternative Resolution, and it may never be a condition of enrollment, employment, or enjoyment of any other right or privilege. Participation in Alternative Resolution is voluntary, meaning both the Complainant and the Respondent must agree to participate. If Alternative Resolution is selected, the Title IX Coordinator will provide timely written notice to both parties that includes:

- The allegations;
- A statement that the Title IX Coordinator has begun the process;
- The process is voluntary and will end upon either party's request;
- Termination of the Alternative Resolution Process may result in initiation of the Title IX Grievance Process;
- Each party may be accompanied throughout the process by an Advisor (who may be an attorney);
- The Title IX Coordinator will notify both parties of the process' outcome; and,
- The process is confidential; however, the Title IX Coordinator will maintain a record of the process and may share information with others if needed to carry out the resolution of the Alternative Resolution Process. Should the parties withdraw from the Alternative Resolution Process, information disclosed or obtained for purposes of the Alternative Resolution Process remains confidential.

The parties may elect to leave the Alternative Resolution Process at any point until the Alternative Resolution Process is concluded. The process is considered concluded when all parties have signed the agreement. If a party elects to leave the Alternative Resolution Process, the TCC Title IX Administrator will determine the next steps under the Title IX Grievance Process, and will notify the parties of such. In participating in the Alternative Resolution Process, the parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

**Determination to Approve Entry into Alternative Resolution Process.** Even where the Parties agree to submit a matter to Alternative Resolution, the Home Institution Title IX Coordinator and/or Human Resources Professional must approve the decision to move the matter to the Alternative Resolution Process and may determine that Alternative Resolution is not appropriate under the circumstances.

Factors that the Home Institution Title IX Coordinator and/or Human Resources Professional may weigh in considering the appropriateness of the Alternative Resolution Process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, and whether the parties are participating in good faith. This determination is not subject to appeal.

Alternative Resolution is permitted to address allegations of student-on-student and employee-on-employee sexual harassment, as well as allegations that a student sexually harassed an employee. Alternative Resolution is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the Alternative Resolution Process, the Home Institution Title IX Coordinator and/or Human Resources Professional may determine that the Alternative Resolution Process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Title IX Grievance Process. This determination is not subject to appeal.

**Role of the Facilitator.** Alternative Resolution Processes are managed by Facilitators, who may not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. A Title IX Coordinator may serve as the Facilitator.

All Facilitators must have training in the definition of Sexual Harassment under this Policy, the scope of the Institution's education program or activity, how to conduct an Alternative Resolution Process, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

**Confidentiality.** In entering the Alternative Resolution Process, the parties agree the process is confidential, related to any testimony and evidence (including admissions of responsibility) they share or receive during the Alternative Resolution Process concerning the allegations of the Formal Complaint. No evidence concerning the allegations obtained within the Alternative Resolution Process may be disseminated to any person, provided that any party to the Alternative Resolution Process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the parties withdraw from the Alternative Resolution Process, information disclosed or obtained for purposes of the Alternative Resolution Process remains confidential.

**Alternative Resolution Options.** TCC offers Alternative Resolution options for addressing Formal Complaints of Sexual Harassment covered under this Policy. These options include, but are not limited to:

- **Mediation.** The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained Facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution. Mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Parties' Home Institutions' Title IX Coordinators and/or Human



Resources Professionals will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within thirty (30) business days after the initial report is received and both parties have consented to mediation, and will continue until concluded or terminated by either party or the Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals. During mediation, any potential investigation will halt, and calculations for time frames will be paused. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals to re-evaluate other options for resolution, including initiation of the Investigation and/or Hearing process.

During mediation, a Facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the Facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each party will be permitted to bring to any meetings an Advisor and a Support Person of their choice, who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the Facilitator will memorialize in writing the agreement that was reached between the parties. The Respondent's Home Institution Title IX Coordinator and/or Human Resources Professional will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

The Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals will keep records of all reports and conduct addressed through Alternative Resolution.

- **Restorative Justice.** A Restorative Justice ("RJ") Conference is a dialogue, facilitated by an employee or contractor with appropriate training, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible party and the individual(s) affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A party may request to engage in RJ at any stage of the disciplinary process; however, RJ may not be an appropriate mechanism for all conflicts. To qualify for RJ, the student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. Additionally, all involved parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ conference proceeds only if all parties agree to participate willingly. The RJ process typically commences within thirty (30) business days after the initial report and receipt of written agreements from all involved parties. The conference will continue until the conference is successfully concluded or until the Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved parties, at which time the process is concluded, and the matter is resolved. If a resolution

cannot be reached, the matter will be referred to the Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals to re-evaluate other options for resolution.

The Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals will monitor the parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

The Parties' Home Institutions' Title IX Coordinators and/or Human Resources Professionals will keep records of all reports and conduct addressed through Alternative Resolution.

## X. Recordkeeping

TCC and the relevant Institutions (as defined in Section I., above) will retain documents related to this process for a period of seven (7) years. Documents related to this process include: Formal Complaints, remedies provided to the Complainant, the Investigation Report and attachments, the hearing record, including accepted documents and the Hearing Decision, any sanctioning determination, and all appeal-related documents, as well as any audio recording or transcript of the hearing.

TCC and the relevant Institutions will also retain, for a period of seven (7) years, all materials used to train the Title IX Administration, Title IX Coordinators, Deputy Title IX Coordinators, Hearing Coordinators, Investigators, decision-makers, and any person(s) facilitating the Alternative Resolution or appeal process. TCC shall make this training material publicly available on its website.

## XI. Clery Act Reporting

Pursuant to the Clery Act, the Institution includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the Institution to issue timely warnings to the Institution's community about certain crimes that have been reported and which may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the Institution withholds the names and other personally identifying information of Complainant(s) when issuing timely warnings to the Institution's community.

## XII. Periodic Review

This Policy and its procedures supersede previous policies addressing Title IX Sexual Harassment and Retaliation, and is maintained by The Claremont Colleges Services. Upon direction by the member Institutions' Presidents, there will be periodic reviews conducted of this Policy.

## XIII. Revocation by Operation of Law

Should any portion of the Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Final Rule be withdrawn or modified to not require the elements of this Policy, then this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the

opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Sexual Harassment Policy be revoked in this manner, any conduct covered under the Title IX Sexual Harassment Policy shall be investigated and adjudicated under the Institution's existing policies.

#### XIV. Non-Discrimination in Application

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

#### XV. Effective Date

This Policy is effective as of August 14, 2020, and only applies to Sexual Harassment alleged to have occurred on or after August 14, 2020. Incidents of Sexual Harassment alleged to have occurred before August 14, 2020 will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

This Policy was last updated on February 15, 2021.<sup>17</sup>

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<sup>17</sup> Non-substantive, clarifying revisions were made on April 12, 2021. On September 30, 2021, contact information for a Title IX Coordinator was updated, and language was removed from Section IX.D.9 in accordance with Section XIII of this Policy. On December 21, 2021, additional non-substantive, clarifying revisions were made, as were adjustments to the Institutions who adopted this Policy, and Title IX Coordinator contact information.