

## Interim Sexual Misconduct Policy and Procedures

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**I. INTRODUCTION**

Pomona College (hereafter referred to as the “College”) is committed to providing a safe and non-discriminatory educational, working, and residential environment for the students, faculty, staff and other members of the Pomona College and The Claremont Colleges (“TCC”) community. In particular, the College aspires to provide members of its community with an environment that is free from sexual harassment, sexual assault, relationship violence, and stalking (collectively, “sexual misconduct”). This conduct is disruptive of the living, learning and working environment of the Pomona College community and deprives students, employees and other community members of equal access to the College’s programs and activities.

The College embraces its responsibility to increase awareness of sexual misconduct, prevent its occurrence, diligently investigate complaints of sexual misconduct and retaliation, support survivors, deal fairly with those accused of sexual misconduct and firmly with offenders, and comply with Title IX of the Higher Education Amendments of 1972 (“Title IX”); Title VII of the Civil Rights Act of 1964 (“Title VII”); Violence Against Women Reauthorization Act of 2013 (“VAWA”); the Campus SaVE Act and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) as well as applicable California statutes, including, but not limited to relevant sections of the Education Code, including but not limited to sections 66262.5 and 66281.8.

In August 2020, new Title IX regulations adopted by the U.S. Department of Education (“2020 Title IX Rule”) came into effect for alleged conduct that occurred on or after August 14, 2020. The 2020 Title IX Rules require the College to follow certain processes. To comply with its obligations under the 2020 Title IX Rules while also working to create a common, centralized Title IX grievance process for the TCC community, the College has joined with other TCC institutions to create a centralized Title IX Grievance Process that will cover student complainants and respondents from across TCC to improve consistency in and common understanding of the investigation and adjudication of Title IX cases. Accordingly, cases covered by the 2020 Title IX Rule are handled through the TCC Title IX Policy. More information about the TCC Title IX Policy and related grievance process is available

here. The College will follow the TCC Title IX Policy only when required, in response to conduct specifically covered by the 2020 Title IX Rule.

Complaints of discrimination or harassment not governed by the TCC Title IX Policy are subject to investigation and resolution under one or more of the College's other policies and procedures: the Pomona College Sexual Misconduct, Sexual Harassment, Gender Discrimination Policy and Procedures; the Pomona College Staff and Faculty Title IX Sexual Harassment Policy and Procedures; the Pomona College Discrimination and Harassment Policies and Grievance Procedures, Pomona College Student Code, or applicable College policies. These other policies apply to conduct that is not included under the TCC Title IX Policy.

The College's Sexual Misconduct, Harassment, and Discrimination Policy (the "Policy" and these "Procedures") confirms the College community's commitment to gender equity consistent with and required by federal and state law and the College's own values.

This Policy has the following goals:

- It identifies the conduct prohibited by the College. If a person engages in such conduct, the College will take steps to determine the person's responsibility and, if determined to be responsible, to impose appropriate sanctions against the person. In addition, the Policy provides the College with the means to protect the College community from a person who the College reasonably believes, based upon evidence, presents a danger to members of the College community.
- It sets forth in reasonable detail the procedures that the College will follow in the event any member of the College community is or believes himself or herself to be the victim of non-Title IX sexual misconduct or harassment. The procedures are grouped into four categories: (i) reporting, (ii) intake and initial review, (iii) investigation, and (iv) hearings and sanctions. The procedures are designed to be fair and impartial and to resolve complaints promptly and equitably for the parties involved and the College community. This description of the procedures is designed to provide members of the College community with information about what to expect if a report alleging a violation of this Policy is made to the College.
- It makes clear that the investigation and adjudication of alleged misconduct under this Policy is not an adversarial process between the Complainant, the Respondent, and the witnesses, but rather a process for the College to comply with its obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.
- It provides information about some of the medical, psychological and other resources available to persons who are the victims of sexual misconduct, discrimination or harassment. The College is committed to expanding resources, and a detailed list of the most current resources is maintained on the Pomona College website here.
- It promotes prevention of sexual misconduct in the first instance as the best policy for the Pomona College Community. To that end, the College provides education and training for its students, faculty and staff on a regular basis, recognizing that there are things individuals can do to proactively reduce the risk of experiencing sexual violence. While the College recommends that all members of the Community review and follow that training to help prevent sexual misconduct, the College also recognizes that it is never a victim's fault if someone else takes sexual advantage of that person.

Certain terms used in this Policy must be defined with as much precision as possible. For example, the formal definitions of such terms as "Sexual Misconduct," "Consent" and "Incapacitation" are critical to understanding the Policy. When those terms are used in the text of the Policy online, they are hyperlinked so that if the cursor is placed over the term, the definition appears in a popup box.

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## II. SCOPE OF POLICY

This Policy applies to non-Title IX sexual misconduct or harassment alleged against all Pomona College students. Students employed by the College will be considered students for purposes of this Policy. This Policy also applies to third parties (such as campus visitors or vendors) who may have contact with members of the College community either on the College's campus or at other College events and programs. If the alleged perpetrator (hereafter referred to as "Respondent") is an employee or student from one of the other members of The Claremont Colleges ("TCC"), the College will investigate the matter and take steps to stop the

conduct and remedy its affects to the extent reasonably possible. However, the relevant procedures related to any disciplinary action against the Respondent will be those of the Respondent's home institution. Throughout the complaint, investigatory, hearing, appeal, and/or disciplinary process, the College will maintain its authority to take action to ensure campus safety. In addition, as to Respondents who at any time were previously enrolled at the College, the College's jurisdiction and disciplinary procedures extend to sexual misconduct, harassment and discrimination which occurs on Claremont Colleges' premises, at an activity sponsored by any of the Claremont Colleges, and conduct which occurs off campus, even if it occurs outside of an academic term or when the student is not currently enrolled at the College. Moreover, the College retains the authority to administer this Policy with respect to any such conduct by a student Respondent (while a student) even if the student subsequently graduates, withdraws, takes leave, or is otherwise absent from the College, and even if the College does not learn of such conduct until after the student graduates, withdraws, takes leave, or is otherwise absent from the College.

The procedures set forth in this Policy are administrative in nature and are separate and distinct from the criminal and civil legal systems. Pursuing resolution through these procedures does not preclude survivors from pursuing legal action now or in the future. If the conduct in question is alleged to be a violation of both College policy and public law, the College will proceed with its normal process, regardless of action or inaction by outside authorities. Decisions made or sanctions imposed through these or other College procedures are not subject to change because criminal or civil charges arising from the same conduct are dismissed, reduced, or rejected in favor of or against the Respondent.

In the event of a conflict with any other Claremont Colleges intercampus policy, the procedures set forth in this Policy will prevail. Changes to the policies and procedures contained in this Policy may be made with the approval of the Board of Trustees and/or the President.

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### III. STATEMENT OF PROHIBITED CONDUCT UNDER THIS POLICY AND RELEVANT TERMS

#### A. Summary

- This Policy prohibits **Sexual Misconduct** that is either **Non-Consensual Sexual Contact** or **Non-Consensual Sexual Intercourse**.
- This Policy prohibits **Dating Violence, Domestic Violence, Stalking** and **Hazing** when any of those types of conduct is gender-based.
- This Policy prohibits **Sexual Misconduct** in the form of **Sexual Exploitation**.
- This Policy prohibits **Discrimination** on the basis of gender.
- This Policy prohibits **Retaliation** against any person who is exercising his or her rights under this Policy.
- This Policy prohibits **False Reporting** of reports of violations of this Policy.

The obligations of this Policy require a clear understanding of the concept of consent. In order for individuals to engage in sexual activity of any type, there must be clear, knowing and voluntary Consent prior to and during sexual activity.

Consent is positive permission to engage in the sexual activity. California law defines consent as "affirmative, conscious, and voluntary."

Persons are unable to give Consent if they Lack Capacity to give Consent including Incapacitation Due To Alcohol Or Drugs Or Other Reasons or if Consent was obtained through Force and Coercion. A person who engages in any conduct prohibited by this Policy is not excused from responsibility owing to the person's use of alcohol or drugs such that the person's judgment was impaired.

#### B. Definitions of Prohibited Conduct

##### 1. Sexual Misconduct

The College defines sexual misconduct as any of the following:

##### A. Non-Consensual Sexual Contact (or attempts to commit same)

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon a person,
- that is without consent, with or without force.\*

Sexual contact includes: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice. This is also referred to as “sexual battery.” This can including using a person’s own intimate part to intentionally touch another person’s body without consent.

\*The use of force is not “worse” than the subjective experience of violation of someone who has sex without consent. However, the use of force will be a factor in increasing sanctions.

#### B. Non-Consensual Sexual Intercourse (or attempts to commit same)

Non-Consensual Sexual Intercourse is:

- any sexual intercourse however slight,
- with any object,
- by a person upon a person,
- that is without consent, and with or without force.

Intercourse includes: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact. This is also referred to as “rape.”

Nonconsensual sexual contact and nonconsensual sexual intercourse are often collectively referred to as “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.

Generally, a sexual assault has been committed when an individual engages in sexual activity without the explicit consent of the other individual involved, including when the individual lacks capacity to consent. In this Policy, sexual activity is any touching

of a sexual or other intimate part of a person either for the purpose of asserting power or gratifying sexual desire of either party. This includes coerced touching of the Respondent by the Complainant as well as the touching of the Complainant by the Respondent, whether directly or through clothing. Accordingly, for purposes of the College's policies, sexual assault falls within the College's definition for sexual misconduct.

## 2. Other Forms of Sexual Harassment

The following alleged conduct will be addressed through the Procedures outlined in this Policy when the conduct is gender-based:

### A. Dating Violence

As defined by the VAWA (34 USC 12291(a)(10)), dating violence is violence committed by a person:

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of (1) the length of the relationship, (2) the type of the relationship, and (3) the frequency of interaction between the persons involved in the relationship.

### B. Domestic Violence

As defined by the VAWA (34 USC 12291(a)(8)), domestic violence is the use of physical, sexual or emotional abuse or threats to control another person who is a current or former spouse or other intimate partner. It includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

### C. [Stalking](#)

As defined by the 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 (i) fear for their safety or the safety of others; or, (ii) suffer substantial emotional distress.

### D. [Hazing](#)

Hazing is defined in the College Hazing Policy as set forth in the College's Disciplinary Policies and Procedures and as also found in the College's Student Code.

### E. Sexual Exploitation:

Sexual exploitation is a form of sexual misconduct which occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

1. Invasion of sexual privacy, including the viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire;

2. Prostituting another person;
3. Trafficking of another person, defined as the “inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion”
4. Non-consensual recording of images, including video or photo, or audio-taping of another person’s sexual activity or intimate parts;
5. The distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
6. Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
7. Engaging in voyeurism;
8. Knowingly transmitting a sexually transmitted infection, a sexually transmitted disease, or HIV to another person;
9. Knowingly making a materially false representation about sexually transmitted infection, birth control, or prophylactic status with the specific intent and effect of inducing another to participate in a specific sexual act or encounter;
10. Exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
11. Sexually-based stalking;
12. Knowingly contributing to the incapacitation of another person where such incapacitation is a contributing factor to that person being subjected to another form of sexual misconduct.

#### F. Sexual Harassment

Sexual harassment may be either “quid pro quo” harassment, that is unwelcome sexual advances, requests for sexual favors where submission is made an explicit or implicit term or condition of an individual’s employment, academic status or education progress or where submission to or rejection is used as the basis for making employment or educational decisions affecting an individual; or “environmental” harassment, where the individual is subjected to a hostile or intimidating environment, in which verbal, visual or physical conduct of a sexual nature, because of its severity and/or persistence, is likely to interfere with an individual’s work or education, or to affect adversely an individual’s living conditions, or the conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment. Occasional compliments that are generally accepted as not offensive or other generally accepted social behavior, on the other hand, do not constitute sexual harassment.

Examples of sexual harassment may include such conduct as:

1. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendations;
2. Direct propositions of a sexual nature;
3. Subtle pressure for sexual activity, an element of which may be repeated requests for private meetings without an academic and employment purpose;

4. A pattern of conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (1) unnecessary touching, patting, hugging, or brushing against a person's body; (2) remarks of a sexual nature about a person's clothing or body, whether or not intended to be complimentary; (3) remarks about sexual activity or speculations about previous sexual experience; or (4) other comments of a sexual nature, including sexually explicit statements, questions, jokes or anecdotes;
5. Certain visual displays of sexually-oriented images outside the educational context;
6. Letters, notes or electronic mail containing comments, words or images as described in (e) above.

Sexual harassment includes harassment of women by men, of men by women, and same gender gender-based harassment.

### 3. Definition of "Consent"

California law defines consent as "affirmative, conscious, and voluntary." 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 (i.e., use of a condom).<sup>1</sup> In order to give effective consent, one must be of legal age and have the capacity to give consent:

- The legal age of consent in the state of California is 18 years.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time. Thus, even if a person agreed to sexual interaction or continued sexual interaction, that person has the right to change their mind, irrespective of how much sexual interaction may have already taken place.
- Previous relationships or prior consent cannot 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.

**Force and Coercion:** 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. Force includes the use of threats, intimidation (implied threats) and/or coercion to produce consent
- **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. Coercion is unreasonable pressure for sexual activity ("Have sex with me or I'll hit you. Okay, don't hit me; I'll do what you want."). Coercive behavior differs from seductive behavior based on the type of pressure used to get consent. When someone makes it clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

A person who does not want to engage in sexual activity is not required to resist or to verbally object. There is no requirement that a party resists a sexual advance or request, but resistance is a clear

demonstration of non-consent. The presence of force, however, is not demonstrated by the absence of resistance.

Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent (i.e., crying, pulling away, not actively participating, uncomfortable or upset facial expressions).

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).

A) Incapacitation due to alcohol or other drugs: 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.

Because alcohol or other drug use can place an individual's capacity to consent in question, sober sex is less likely to raise such questions. Being under the influence of alcohol or other drugs does not in and of itself indicate incapacitation. When alcohol or other drugs, including date rape drugs (such as Rohypnol, Ketamine, GHB, etc.), are involved, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (the who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Administering a date rape drug to another individual is a violation of this Policy. More information on these drugs can be found at <http://www.911rape.org/>.

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; or,
- Capacity to appreciate the nature and the quality of the act.



B) Incapacitation due to other reasons: This Policy also covers a person whose incapacity results from mental or physical disabilities, sleep, unconsciousness, or involuntary physical restraint. Accordingly, it shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the 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;
- The person was unable to communicate due to a mental or physical condition.

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

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

#### 4. Additional Relevant Terms

**Amnesty:** Generally, sanctions related to alcohol or drug policy violations will not be imposed on individuals cooperating in an investigation or hearing under this and related policies. See the College's Good Samaritan/Amnesty Policy in Section VII.D for more information.

**Advisor:** An Advisor is an individual who provides guidance to the Complainant or Respondent throughout the College's grievance 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. An Advisor may write/never speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. See Section IV.D.3 for additional information about the Advisor's role. The College reserves the right to exclude an Advisor 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.

**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 the College:

- 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. Due to their proper training and supervision Project Sister Campus Advocates at Pomona College are Confidential Resources with legal privilege.

- 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 Assistant Director of the CARES Office, the EmPOWER Center Director, and the Director at the Queer Resource Center (QRC).

**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 by the College to qualify as a Respondent under this Policy. The College may dismiss a Complaint if the Respondent is no longer enrolled or employed by the College; however, the decision to dismiss will be made on an individual basis.

**Support Person:** A Support Person is an individual who provides emotional support to a Complainant or Respondent throughout the College's 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 write/speak on behalf of a party or otherwise disrupt any meetings or hearings in any manner. See Section IV.D.3 for additional information about the Support Person's role. The College reserves the right to exclude a Support Person who does not abide by these procedures.

**Supportive Measures:** Also referred to as interim measures throughout this Policy, they are 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 IV.D.5 of this Policy.

## IV. SEXUAL MISCONDUCT, HARASSMENT, AND DISCRIMINATION COMPLAINT PROCEDURES

These procedures govern the reporting, initial review, investigation, and resolution of complaints of alleged violations of this Policy when they involve Pomona College student Respondents.

Individuals who believe they have been subjected to sexual misconduct, harassment and/or discrimination are encouraged to report such conduct. Any College faculty member, coach, student affairs professional staff and student resident assistant, as well as other College designated Responsible Employee, who receives information of an alleged sexual misconduct, discrimination and/or harassment is obligated to file a report with one of the College representatives set forth below.

### A. Reporting an Alleged Violation of this Policy

#### 1. Reporting to the College

Individuals who believe that they have been the subject of or have witnessed alleged sexual misconduct, discrimination and/or harassment are encouraged to contact any of the appropriate College representative listed below:

#### **Title IX Coordinator**

Erica Moorer, Associate Dean

909-621-8017; Email: [erica.moorer@pomona.edu](mailto:erica.moorer@pomona.edu)

Office: Alexander 102

**Deputy Title IX Coordinators:**

Brandon Johnson, Sr. Associate Athletic Director

909-621-8420; Email: brandon.Johnson@pomona.edu

Office: Athletics, Montgomery Building

Pierre Englebert, Associate Dean of the College

909-607-2496; Email: pe004747@pomona.edu

Office: Alexander Hall 236

Ellie Ash-Bala, Associate Dean, Student Affairs; Director, Smith Campus Center

909-621-8611; Email: ellie.ash-bala@pomona.edu

Office: Smith Campus Center Suite 244

Brenda Rushforth, Assistant Vice President/CHRO

909-607-1686; Email: brenda.rushforth@pomona.edu

Office: Pendleton Building 121

Under no circumstances is an individual required to report sexual misconduct to a supervisor or academic instructor who is the alleged perpetrator.

**Administrator On-Call (AOC)**

Students can always reach an administrator on-call 24 hours a day by calling Campus Safety (909-607-2000) and having the administrator on-call called.

**Law Enforcement**

The College encourages any member of the College community who experiences any form of sexual violence to immediately contact the Claremont Police Department (“CPD”) by contacting Campus Safety (909-607-2000) if they are on campus or by dialing 911 if they are off campus.

In addition, individuals may also directly report sexual violence at any time after an incident by contacting CPD:

570 West Bonita Avenue  
909-399-5411

Prompt reporting is encouraged, because facts often become more difficult to establish as times passes. However, the College will investigate and take appropriate action in response to all reports regardless of when the alleged conduct occurred. The ability of the College to respond to the conduct is limited if the Respondent is no longer a member of the College community. If a College student leaves the College with a pending complaint against them, they will not be permitted to return to the College until the case is resolved through these procedures.

**2. Assessment of Complaints and Related Outreach**

The College's Title IX coordinator or other designated employee will assess each report of sexual harassment and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of the reported conduct. Such outreach communications will include all of the following information:

- The College has received a report that the student may have been a victim of sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complaint process, or both, under this section is prohibited.
- Counseling resources within the College or in the community.
- Where a crime may have occurred, notice that the student has the right, but not the obligation, to report the matter to law enforcement.
- A link to an overview of the College's investigation procedures.
- The availability of potential interim measures, such as no-contact directives, housing changes, and academic schedule changes, where applicable.
- The importance of preserving evidence.
- A request for the student to meet with the Title IX Coordinator or other designated employee to discuss options for responding to the report.
- An overview of how the College responds to reports of sexual harassment and link to descriptions of potential disciplinary consequences.

### 3. Privacy and Confidentiality of Reports to the College

One of the most significant concerns expressed by Complainants and witnesses when they come forward is a desire for privacy. Respondents who deny responsibility for the wrongdoing also have expressed a strong desire for privacy until the matter has been resolved. The College deeply respects these concerns, as cases involving sexual discrimination, harassment, and assault are particularly sensitive and demand special attention to issues of privacy.

The College will make all reasonable efforts to maintain the privacy of the parties involved in an investigation and/or hearing for a complaint as well as the confidentiality of the details of an investigation, any hearing, and except where permitted by law, the sanctions imposed. This includes redacting private, confidential (including but not limited to medical) information unrelated to the facts and circumstances of the case pursuant to FERPA and other federal and state, privacy protections, as well as the College's Policy. The College will inform in writing all individuals involved in the investigation and/or hearing process of the critical importance and expectation that, while the processes are ongoing, they maintain the privacy of the process and any information shared with them as a result of their participation. Further, all documents provided in preparation for or related to the hearing proceedings may not be disclosed to any other party under FERPA as such documents constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. All hearing proceedings will be confidential and will not be discussed outside the process, except as may be required or authorized by law; this includes any witnesses and advisors/support persons.

Complainants and Respondents are not prohibited from sharing details of complaints with family/partner, counsel, or a support person/advisor below, who may support or assist the parties in presenting their case. Those persons are also expected to maintain the same level of privacy as Complainants and Respondents and the College will provide a writing regarding privacy to Complainants and Respondents so that they can deliver it to such persons. Nothing communicated in this Policy is intended to limit or prohibit constitutionally-protected speech.

Following resolution of an investigation and any related hearing, the College does not impose any restrictions on the parties regarding re-disclosure of the following: the name of the student (Respondent or Complainant), the findings of the hearing, any sanctions imposed by the College, and the rationale for the findings and sanctions.

If at any point the Complainant requests confidentiality with respect to the Respondent and/or decides not to pursue action by the College, the College will make all reasonable attempts to comply with this request, and will generally grant the request. In these situations, the College's ability to investigate and respond to the conduct may be limited. The College is required to weigh the Complainant's request for confidentiality with the College's commit-

ment to provide a reasonably safe and non-discriminatory environment, including for the Complainant. In determining whether to disclose the Complainant's identity or proceed to an investigation over the objection of the Complainant, the College may consider whether any of the following apply:

- There are multiple or prior reports of sexual misconduct against the Respondent.
- The Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- The Respondent is a faculty or staff member with oversight of students.
- There is a power imbalance between the Complainant and Respondent.
- The Complainant believes that they will be less safe if their name is disclosed or an investigation is conducted.
- The College is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

If the College cannot maintain a Complainant's confidentiality, the Complainant will be notified by the Title IX Coordinator prior to making this disclosure or initiating an investigation. The College will also take immediate steps to provide for the safety of the Complainant where appropriate. In the event the Complainant requests that the College inform the Respondent that the Complainant asked the College not to investigate or seek discipline, the College will honor this request.

If the College determines that it can honor the Complainant's request for confidentiality, it will still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the Complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The College will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. These steps may include support measures such as changing living arrangements or academic accommodations such as course, assignments, or test schedule changes. The Complainant shall be notified that the steps the College will take to respond to the complaint will be limited by the request for confidentiality.

#### **4. Responsible Employees and Confidential Resources at the College and in the Community**

Responsible Employees are those College employees who are not Confidential Resources (defined below) and have authority to take action to redress sexual harassment or provide interim measures to students, or have a duty to report sexual harassment to an appropriate school official who has that authority. If a Responsible Employee learns, in the course of their employment, that a student may have experienced conduct prohibited by this Policy, they must promptly notify the Title IX Officer or designee. In addition, if any of the following people learn, in the course of employment, that any other person affiliated with the College may have experienced Prohibited Conduct, they must promptly notify the Title IX Officer or designee:

- (i) Title IX Coordinator or deputy Title IX Coordinators;
- (ii) Residential advisors;
- (iii) Housing directors, coordinators, or deans;
- (iv) Student life directors, coordinators, or deans;
- (v) Athletic directors, coordinators, or deans;
- (vi) Coaches of any student athletic or academic team or activity;
- (vii) Faculty and associate faculty, teachers, instructors, or lecturers;
- (viii) Laboratory directors, coordinators, or principal investigators;
- (ix) Internship or externship directors or coordinators; or

(x) Study abroad program directors or coordinators.

An individual who wishes for the details of the incident to remain completely confidential may speak with certain designated College employees who, by law, shall maintain confidentiality and may not disclose the details of an incident, subject to certain exceptions in the law (e.g., child abuse). If an individual makes a report to these confidential resources but not to the persons or entities identified in section IV.A.1 above, then the College will not be in a position to take action because it will not have notice of the incident. These Confidential Resources are identified below:

**Project Sister Rape Crisis Counselor at the Claremont Colleges, EmPOWER Center.**

The EmPOWER Center has limited counseling hours; call the number below or check the [Pomona College Sexual Assault: Pomona College Processes & Resources](#) website.

1030 Dartmouth Ave

909-607-0690

**Monsour Counseling and Psychological Services staff**

Tranquada Student Services Center, 1st floor

757 College Way

909-621-8202, 909-607-2000 (after-hours emergency)

**Student Health Services staff**

Tranquada Student Services Center, 1st floor

757 College Way

909-621-8222, 909-607-2000 (after-hours emergency)

**Members of the Clergy including the McAlister Center chaplains.**

McAlister Center for Religious Activities

919 North Columbia Avenue

909-621-8685

**Alternative Resources**

Individuals who have experienced sexual misconduct, including sexual assault may also seek confidential support from a local or national groups, including:

**Project Sister Advocates at Pomona College**

Campus Email: [advocates@pomona.edu](mailto:advocates@pomona.edu)

909-503-7972

Advocates are a trained student group who are available through on-call system to assist students who have experienced sexual assault or misconduct on a 24/7 basis. The Advocates can be contacted at any stage of the processes discussed herein. They have completed the 40-hour advocate training with, are certified and supervised by Project Sister and the CARES office and as such are granted the legal privilege of confidentiality.

**Project Sister Sexual Assault 24/7 Crisis Hotline (Claremont, CA):**

909-626-HELP (909-626-4357)

**House of Ruth (24/7 Crisis Hotline for Domestic violence support):**

877-988-5559

**National Sexual Assault 24/7 Crisis Hotline (RAINN):**

800-656-HOPE

Consistent with Education Code section 66281.8(a)(2)(C)(i), the College has determined that the Assistant Director of the CARES Office is not a responsible employee.

**B. Retaliation Policy**

Retaliation is defined as the taking of an adverse action by any student, faculty or staff member against another individual as a result of that individual's exercise of a right under this Policy, including participation in the reporting, refusal to participate in, or assistance with the investigation, reporting, remedial or hearing processes as provided in this Policy. Retaliation includes adverse actions intended to improperly deter involvement of another in these procedures set forth in this Policy, and may involve actions intended either to intimidate or to penalize individuals for their participation. Retaliation is strictly prohibited by law and this Policy; any person who is found to have engaged in retaliation shall be subject to disciplinary action. Persons who believe that they have been retaliated against for making a complaint/report or for cooperating in an investigation or hearing should immediately contact the Title IX Coordinator. A complaint filed in good faith under this Policy shall not constitute retaliation.

**C. False Reporting Policy**

It is a violation of College policy to file a knowingly false complaint under this Policy of alleged discrimination, harassment and/or sexual misconduct. A complaint by an individual against another based on the filing of a knowingly false complaint may be pursued using the steps followed for sexual misconduct harassment, and discrimination, harassment, and sexual misconduct related complaints as outlined in this Policy and may be filed only after there is completion of the underlying complaint. A complaint filed in good faith under this provision shall not constitute a false report. A finding of no responsibility is not, by itself, evidence that the underlying complaint was not filed in good faith.

**D. The Title IX Coordinator's Initial Review of a Report****1. Title IX Coordinator and Title IX Coordinator's Team**

The purpose of the Title IX Coordinator is to promote and protect gender equity at Pomona College as required by Title IX and related federal and state laws. The Title IX Coordinator does not favor Complainants over Respondents or Respondents over Complainants. The Title IX Coordinator does not promote the College's interests other than its interest in gender equity as evidenced in this Policy and provided by law. The Title IX Coordinator's primary jobs are to administer the procedures in this Policy in order (i) to make appropriate support and resources available to Complainants, other persons who have experienced sexual harassment, discrimination or misconduct, and Respondents; (ii) to provide equitable and prompt resolution of complaints; (iii) uphold the College's sexual harassment, discrimination and misconduct processes and procedures; and (iv) to support ongoing prevention, education and outreach efforts related to sexual misconduct, harassment and discrimination.

Although a report may come in through many sources, the College is committed to ensuring that all reports of sexual misconduct, harassment, and discrimination are referred to the Title IX Coordinator, which ensures consistent application of this Policy.

The Title IX Coordinator may enlist the Title IX Coordinator's Team to assist in the review, investigation, and/or resolution of the report. Members of this team include the Title IX Coordinator, deputy Title IX coordinators, and the associate deans of students. At any point during the process, from initial intake through the appeal, the Title IX Coordinator and the Title IX Coordinator's Team may consult with an expert on trauma-informed response and sexual assault response or with the College's legal counsel.

Depending on the relationship of the Complainant and the Respondent to the College (student, staff, faculty, or other) and the nature of the report, additional Title IX Coordinator's Team members may include representatives from other Pomona or CUC offices as necessary, such as Campus Safety, Dean of the College, or College's Office of Human Resources. The members of this Team oversee the resolution of the reported harassment or misconduct through the College's resolution procedures.

## 2. The Title IX Coordinator's Intake and Initial Review

Upon receipt of a report, the Title IX Coordinator or its designee will provide resources and support information and will conduct an Initial Review. The first step of the Initial Review will typically include an initial meeting between the Complainant and the Title IX Coordinator or a member of the Title IX Coordinator's Team. The purpose of the meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full investigation interview. At this meeting, the Complainant will be provided with information about resources, procedural options, and interim remedies.

During and following this meeting, the Title IX Coordinator or, when appropriate, the designated Title IX Coordinator's Team member, will make a reasonable assessment of the safety of the individual and of the campus community and will determine whether the College has sufficient information to determine the appropriate interim measures, if any.

The Title IX Coordinator or, when appropriate, the designated Title IX Coordinator's Team member, will also consider the interest of the Complainant and the Complainant's expressed preference for the manner of resolution (e.g., in a harassment case, for example, there might be an initial preference for mediation efforts that does not impact the ultimate decision to be made regarding whether a violation of policy occurred). Where appropriate, and as warranted by an assessment of the facts and circumstances, the College will seek action consistent with the Complainant's request. Mediation is not an option for resolution in cases involving allegations of sexual violence.

The Title IX Coordinator Team will make use of a checklist of tasks that shall be completed by the Title IX Coordinator and/or the Title IX Coordinator Team in connection with the intake and initial review. A sample of the checklist, which may be modified from time to time, is set forth as Appendix A below.

The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any interim protective measures) that will directly impact the Respondent, and provide appropriate opportunities for the Respondent to respond to such action(s) as set forth in this Policy.

## 3. Support Person/ Advisor

The Complainant and Respondent may each have a support person of their choosing present with them at all meetings and any hearing associated with a complaint and in which the respective individual is participating. The support person can be the advisor of choice of the student, and can include a current member of the Claremont Colleges community or an external support person, including a lawyer (at their own expense). The support person cannot have involvement in the underlying case. The support person may attend, but shall not participate in, meetings or the hearing. Because this is an administrative process, any legal counsel present as the party's support person during any related proceedings, including, but not limited to, investigatory interviews, hearing, or any other related discussion or meeting, shall be permitted only in a non-participatory advisory role.

In addition, at least ten (10) business days prior to any hearing, the Complainant and Respondent may each notify the Title IX Coordinator that both a support person and advisor/lawyer will be present during the hearing (no more than two individuals in total); the request should be in writing and should identify the persons the Complainant or



Respondent wishes to be present during the hearing. Again, both the support person and advisor/lawyer shall be permitted only in a non-participatory advisory role.

#### 4. Case Manager

The Complainant and Respondent will each be assigned by the Title IX Coordinator, or its designee, a separate College-appointed, trained Case Manager. The Case Manager, usually a staff or faculty member, can help the party to whom they are assigned to navigate through this Policy and related procedures, and support the party in accessing resources, accommodations, and other kinds of support. At the discretion of the party, their assigned Case Manager may accompany them to any meeting/hearing related to these procedures. The Case Manager is expected to be a silent and non-participating observer in any meetings/hearings. The Title IX Coordinator will assign the Case Manager from a pool of trained individuals after the initial intake usually within seven (7) business days.

#### 5. Interim Measures and Support Resources

The College may take whatever measures it deems necessary in response to an allegation in order to protect an individual's rights and personal safety, the safety of the College community, or if determined to be necessary to ensure the integrity of the investigation or adjudication process.

Determinations regarding interim measures are made by the Title IX Coordinator or, when appropriate, the designated Title IX Coordinator's Team member, on a case-by-case basis. Such measures include, but are not limited to, an interim suspension (immediate, temporary suspension pending the outcome of investigation and/or hearing process), a "no contact" letter (an order that an individual refrain from direct or indirect contact with another person or persons), restrictions on access to campus or areas of campus, and/or appropriate changes in academic schedule. Interim measures may include reporting the matter to the local police.

Either a Complainant or Respondent may request a "no-contact" letter/directive or other protection. However, the College will not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made shall be unilateral and only apply against the party found responsible.

Upon the issuance of a mutual no-contact directive, the College will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the College will provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.

Not all of the measures listed in this section will be necessary in every case. If an individual identifies an interim measure that is not already provided by the College, the College will consider whether the request can be granted. In those instances where interim measures affect both a Complainant and Respondent, the College will minimize the burden on the Complainant wherever appropriate.

Failure by any individual to adhere to the parameters of any interim measure is a violation of College policy and may lead to disciplinary action. Individuals are encouraged to report such failures by another party to the Title IX Coordinator. Depending on timing and other circumstances, allegations that an individual has violated any interim measure may be investigated and/or adjudicated (where appropriate) separately from or as part of an ongoing matter.

Other interim measures and available support services may include:

- Campus Safety escort to ensure safe movement on campus;
- referral to medical or emergency services;
- counseling services;
- assistance with identifying off-campus resources;
- assistance with transportation, parking, and/or travel needs;

- assistance in obtaining a court-issued restraining order;
- varied forms of academic assistance, including academic support services, tutoring, alternative course completion options, rescheduling of exams and assignments, changing class schedules, transferring course sections or withdrawing from a course without penalty;
- change of work schedules, job assignments, and worksite location;
- voluntary leave of absence;
- and/or any other remedy that can be tailored to the involved individuals to achieve the goals of this Policy.

Interim measures assume no determination of responsibility. Both parties will receive a document setting forth the interim measures that have been deemed appropriate. The Title IX Coordinator reserves the right to increase, reduce or otherwise adjust interim measures as appropriate based on feedback from Complainants and Respondents.

#### 6. How Complainant Requests for Confidentiality Impact the Title IX Process

The Title IX Coordinator and Title IX Coordinator's Team will take all reasonable steps to respond to a complaint consistent with a Complainant's requests for confidentiality. However, the team's ability to do so may be limited based on the nature of a Complainant's request. For example, if a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College may be limited in its ability to fully respond to the complaint. The College will balance the Complainant's requests with its responsibility to provide a safe and non-discriminatory environment for all College community members and to afford a Respondent fundamental fairness.

In the event that a Complainant does not wish to proceed with formal action, the Title IX Coordinator, in consultation with the Title IX Coordinator's Team, as appropriate, will decide, based on the available information, whether additional steps are required. In making this decision, the Title IX Coordinator's Team will consider following factors: whether the Complainant has requested confidentiality; whether the Complainant wants to participate in additional steps; the severity and impact of the sexual misconduct; the respective ages of the parties, including whether the Complainant is a minor under the age of 18; whether the College can undertake any action without the participation of the Complainant; whether the Respondent has a pattern of committing sexual misconduct; the existence of independent evidence; the extent of prior remedial methods taken with the Respondent; and any legal obligation to proceed based on the nature of the conduct.

#### 7. Conclusion of the Initial Review

At the completion of the Initial Review, the Title IX Coordinator, in collaboration as appropriate with the Title IX Coordinator's Team, will determine whether to refer the report for further investigation. An investigation will not necessarily result in a hearing. The facts developed by the investigator may not warrant a hearing or the Complainant may decide not to go forward with a hearing after the investigation is complete. However, even if a hearing is not pursued, the College has the discretion to take interim measures that ensure campus safety.

The Title IX Coordinator or a member of the Title IX Coordinator's Team will discuss the determination with the Complainant and provide information to assist in understanding available resources and procedural options, which will be communicated to the Complainant in writing.

Once the Title IX Coordinator has referred a report for further investigation, the parties will receive formal notice of the investigation which will include the following:

- 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);
- The Policy sections alleged to be violated by the conduct;
- The 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 the Institution will not make a determination of responsibility until the conclusion of the 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, who may accompany the parties at all stages of the process in a strictly non-participatory manner;
- 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.

Any new allegations that arise during the course of the investigation that could subject either party to new or additional sanctions shall be subject to the same notice requirements outlined above.

The Title IX Coordinator will also inform the Complainant and the Respondent that retaliation is prohibited by law under the VAWA, Title VII, and California state law, as well as College policy. The College will take strong responsive action to protect the safety of any individual.

The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, gender discrimination or other violations of this Policy, whether by the Complainant or a third party, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

#### **E. Alternative Resolution**

In some circumstances, where both parties are amenable, the College may permit alternative resolution instead of the hearing process provided in this Policy. Some of the factors that the College may consider when determining eligibility for alternative resolution include the previous history within the College, severity, scope and nature of the alleged policy violations, including whether the conduct alleged is part of a pattern and involves multiple members of the College community. If successful, engagement in any approved form of alternative resolution will not result in a notation on either Party's disciplinary record.

If the Title IX Coordinator or Deputy Coordinator determines that such an alternative resolution process is appropriate under the facts and circumstances of the case, one or more of the following, or similar, methods may be utilized:

1. A meeting of the Title IX Coordinator or Deputy Title IX Coordinator, the Complainant, and the Respondent; and/or
2. Resolution Agreements by the College between the Complainant and Respondent; and/or
3. Mediation

Referral of the case to a mediator who has both legal and/or personnel relations experience. The mediator will discuss the issues with both principals and seek appropriate actions by the principals involved to reach an acceptable resolution. The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained Facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution. Mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular

case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time. Consistent with California law, the College does not permit mediation, even on a voluntary basis, to resolve allegations of sexual violence (i.e., rape or sexual battery).

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 Title IX Coordinator. 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 Title IX Coordinator 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 Title IX Coordinator will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

The Title IX Coordinator will keep records of all reports and conduct addressed through mediation.

#### 4. 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 Title IX Coordinator 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 Title IX Coordinator 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 Title IX Coordinator to re-evaluate other options for resolution.

The Title IX Coordinator will monitor the parties’ adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory. The Title IX Coordinator will keep records of all reports and conduct addressed through RJ.

These informal procedures are intended to resolve actual or perceived instances of harassment and discrimination through agreement and mutual understanding between the parties involved without the need for more formal action by the College. That said, the College retains the right to review/revise any draft terms reached through any of these alternative resolutions processes between the parties if necessary to address or prevent a hostile educational environment or to ensure students’ access to education.

At the conclusion of any alternative resolution procedure which results in the parties and the Title IX Coordinator or deputy Title IX Coordinator agreeing the charge has been successfully resolved, each party will be asked to sign an acknowledgment that the informal procedure was performed with their agreement and resulted in a resolution of the charge that was satisfactory to her or him.

The details of any conditions agreed to by either party (e.g. counseling, the avoidance of a particular behavior) may be included in this agreement. Signing the acknowledgment form is the final step in the informal resolution process, and is entirely voluntary. There will be no adverse consequences for anyone who declines to participate in the informal resolution procedure or who participates in an informal resolution procedure and then subsequently declines to sign the acknowledgment of resolution. The signed agreement/acknowledgment will be kept in the confidential files of the Office of Student Affairs and available to its Title IX and Deputy Title IX Coordinators.

If either party declines to sign the agreement/acknowledgment, the alternative resolution procedure will be deemed unsuccessful and result in a formal investigation process.

#### **F. Time Frames for Resolution**

The College seeks to resolve all reports of violations of this Policy, especially those involving sexual misconduct, within 90 to 120 business days of the issuance of the notice of investigation by the Title IX Coordinator or its designee. 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 College's Title IX Coordinator. The College seeks to complete any appeals processes within forty (40) business days. While all time frames expressed in this Policy are not rigid requirements, they are meant to be followed except upon showing of good cause. Circumstances may arise that require the extension of time frames. Failure to resolve a report within these time periods does not, in and of itself, constitute a procedural error. Any such argument of procedural error must also include an explanation as to how the delay materially impacted the outcome of the Formal Grievance Process.

Circumstances that may require the extension of time frames include the complexity of the allegations, the number of witnesses involved, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances. The College will seek, if possible, to continue investigations or scheduling of hearings during breaks, or if the student is on leave or off-campus due to study abroad or other reasons. Due to the time frame expectations for these kinds of cases, the College acknowledges that academic deadlines, and curricular and/or co-curricular commitments may have to be delayed or not met; they do not constitute bases or rationales for delay. As the College recognizes that the investigation and adjudicative processes take precedence over academic deadlines and/or commitments, the College will provide academic accommodations, including reduction of course loads and other accommodations (to the extent possible). The College will not unreasonably deny a student party's request for an extension of a deadline in this Policy related to a complaint during periods of examinations or school closures.

In the event that the investigation and/or resolution processes described in this Policy are anticipated to exceed this time frame, the Title IX Coordinator will notify all parties of the reason for the delay in writing and the expected adjustment in time frames.

Student Respondents will not be eligible to be considered for graduation until the completion of the entire proceedings, including any appeals process. In such circumstances, fair and reasonable efforts will be made to expedite the process, including seeking the cooperation of all parties.

#### **G. Reporting Options Outside of the College: State and Federal Enforcement Agencies and the Claremont Police Department**

The College's internal procedures are administrative in nature and are separate and distinct from the criminal and civil legal systems. Pursuing resolution through these procedures does not preclude someone from pursuing legal action now or in the future.

##### **1. Reporting Potential Criminal Violations to Claremont Police Department ("CPD")**

In cases involving potential criminal misconduct, individuals are encouraged to file a report with the CPD by calling 911 or contacting CPD directly:

570 West Bonita Avenue  
909-399-5411

The College's procedures and the legal system work independently from one another and the College will proceed with its process, regardless of action or inaction by outside authorities. Decisions made or sanctions imposed through these procedures are not subject to change because criminal or civil charges arising from the same conduct are dismissed, reduced, or rejected in favor of or against the Respondent.

## 2. Compliance with California Education Code Section 67383

In certain circumstances as defined under the California Education Code, the College shall be required to forward information concerning reports of violent crimes, including reports of sexual assaults, to the CPD. The report shall be forwarded to the CPD without identification of the Complainant and Respondent, unless explicit consent is provided by the Complainant allowing for the sharing of personally identifying information.

## 3. Prohibited Sexual Harassment and Discrimination in Employment-Reporting to State and Federal Enforcement Agencies

In addition to the College's internal remedies, employees and students should also be aware that the Federal Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH") investigate and prosecute complaints of prohibited harassment and discrimination in employment. These agencies may be contacted at the addresses listed below:

### **EEOC Los Angeles District Office**

255 East Temple Street, 4th Floor

Los Angeles, CA 90012

(213) 894-1000

### **DFEH Los Angeles Office**

320 West 4th Street, Suite 1000, 10th Fl.

Los Angeles, CA 90017

(213) 439-6799

contact.center@dfeh.ca.gov

Students also have the right to file a formal complaint with the United States Department of Education:

### **Office for Civil Rights (OCR)**

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 245-8392

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

## **H. Truthfulness**

All participants in an investigation and/or hearing are expected to cooperate fully and provide only truthful statements and responses in all meetings and/or hearings related to these procedures. Individuals may be hesitant to report conduct which they have experienced or witnessed or participate in an investigation and/or hearing because they fear that they

themselves may be charged with a policy violation, such as underage drinking at the time of the incident. To encourage truthfulness and reporting, the College pursues a policy of offering Complainants and witnesses limited immunity from being charged for policy violations related to an alleged incident which is reported in good faith. See the Good Samaritan/Amnesty Policy below for more information about the College's consideration of related alcohol and drug policy violations. While violations other than those covered by the Good Samaritan/Amnesty Policy cannot be completely overlooked, the College will provide educational rather than punitive responses, in such cases.

## I. Investigation Procedures

When a determination has been made by the Title IX Coordinator to proceed with an investigation, the following steps are initiated by the Title IX Coordinator or Title IX Coordinator's Team designee.

### 1. Complaints Involving Allegations of Sexual Misconduct, including Sexual Assault Against Student Respondents

#### A. Appointment of Investigators

The Title IX Coordinator will select one external investigator, and may select one internal investigator employed by Pomona College, both chosen from a pool of investigators trained in the College's policies and procedures, trauma-informed response, Title IX investigations, and the dynamics of sexual harassment and sexual violence; however, where one of the involved parties is from a different Claremont College, a single external investigator may be selected. The Title IX Coordinator will meet with the parties to review the complaint, related policies, and these procedures.

The Title IX Coordinator will promptly notify the parties of the identity of the Investigator(s). If a party objects to the proposed Investigator's involvement based upon an actual or perceived conflict of interest, the party must provide written notice to the Title IX Coordinator within three (3) business days from the notification explaining the conflict of interest. A conflict of interest occurs where an individual's personal interests or relationships conflict with their ability to be a neutral fact finder in a particular case. For example, if a member has also served as an advisor for a party to a complaint or has a close personal relationship with one of the parties, there may be a conflict of interest. The Title IX Coordinator will promptly rule on the objection and provide notice to the parties. If a conflict of interest is found, the Title IX Coordinator will expedite selection of another Investigator(s), and shall promptly notify the parties of the selection.

#### B. Appointment of External Adjudicator

In those matters moving forward to investigation and involving a Respondent from the College, the Title IX Coordinator will also select an External Adjudicator who will preside over any hearing of the matter to determine responsibility under this Policy, including (in consultation with the Title IX Coordinator) the determination of sanctions pursuant to Policy's guidelines. The External Adjudicator will also review and evaluate any pre-hearing concerns raised by the parties with respect to improper investigative procedures. The External Adjudicator will be a neutral party from outside of the College, typically a retired civil jurist, experienced attorney or seasoned student conduct administrator experienced in these matters, who is trained and experienced in dispute resolution, Title IX and trauma-informed response to complaints of sexual harassment and sexual violence, the dynamics of sexual misconduct, and the College's policies and procedures, including applicable confidentiality requirements.

The Title IX Coordinator will promptly notify the parties of the identity of the External Adjudicator. If a party objects to the proposed External Adjudicator's involvement based upon a conflict of interest, the party must provide written notice to the Title IX Coordinator within three (3) business days from the notification explaining the conflict of interest. The Title IX Coordinator will promptly rule on the objection and provide notice to the parties. If a conflict of interest is found, the Title IX Coordinator will expedite selection of another External Adjudicator, and shall promptly notify the parties of the selection.

#### C. Expert Consultation(s)

The Investigator and External Adjudicator may consult medical, psychological, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation and/or before the External Adjudicator during a hearing.

#### D. Investigation Overview

Every complaint alleging sexual misconduct, discrimination and/or harassment that the College submits to an Investigator will be investigated promptly and thoroughly. In conducting an investigation, the Investigators will be particularly sensitive to concerns regarding retaliation relating to an individual's participation in the process as a party or witness. The Investigators will conduct interviews as needed with all appropriate individuals, including the Complainant and Respondent, and will gather any pertinent evidentiary materials.

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.

After concluding their investigation, the Investigators will draft an Investigation Report summarizing witnesses interviewed, evidentiary materials gathered, and conclusions concerning any violations of College policy. The Investigation Report shall identify the evidence considered material to the Investigators' recommendation that the case should or should not move forward to a hearing and will provide explanation of the Investigators' characterization of evidence for purposes of reaching their conclusion. Depending on the complexity of an investigation, the number of claims and witnesses, the timeframe for completion of an investigation may vary; however, the College anticipates that the Investigators will normally complete their investigation and deliver the Investigation Report to the Title IX Coordinator within 30-60 business days.

The Investigators will then provide their report to the Title IX Coordinator. The Title IX Coordinator will review the report to determine if there is sufficient information for the College to believe that it is more likely than not that a College policy violation occurred. The Title IX Coordinator may refer back to the Investigators any questions that the Title IX Coordinator has concerning the report's contents or conclusions. After the Investigators successfully answer or resolve the Title IX Coordinator's questions or concerns, if any, and the Title IX Coordinator has completed its review, the Title IX Coordinator will either: (1) prepare a Statement of Alleged Policy Violations which will summarize why the College believes it is more likely than not that the alleged conduct did occur and that the Respondent is responsible for violating College policy; or (2) will prepare a Results Notification Memorandum which will summarize why the College believes it is more likely than not that the alleged conduct did not occur and that the Respondent is not responsible for violating College policy.

#### E. Post-Investigation Meetings with Parties

The Title IX Coordinator will then meet with the Complainant and Respondent, separately, to discuss the content of the Statement of Alleged Policy Violations or the Results Notification Memorandum and to provide them with copies of the document along with copies of the Investigators' report. To protect the integrity of the College's various investigatory and/or hearing processes, these documents shall be kept confidential by the parties involved and not shared with witnesses or persons not involved in the matter. However, Complainants and Respondents are not prohibited from sharing these documents with family, counsel, or a support person/advisor. Neither the Complainant nor the Respondent are required to meet with the Title IX Coordinator, and may decline to do so.

#### F. Response by the Parties to the Statement of Alleged Policy Violation or Results Notification Memorandum and Review by External Adjudicator

After meeting with the Title IX Coordinator to review the conclusions of the investigation, and/or after receiving either the Statement of Alleged Policy Violation or Results Notification Memorandum, each party may submit a written response to the Title IX Coordinator for review by the External Adjudicator. Such written responses, if any, must be submitted within seven (7) business days after receipt of either the Statement of Alleged Policy Violation or Results Notification Memorandum. Exceptions to the seven-day period will be limited and rare.



Through this written response, either party may request the External Adjudicator to overturn the determination of the Title IX Coordinator's assessment based on improper investigative procedures and/or the discovery of new evidence that was not reasonably available at the time of the investigation interviews. Any party asserting improper investigative procedures should outline additional steps that party believes are necessary for a proper investigation, including:

- Posing any follow-up issues or questions for any witness, the Complainant or Respondent;
- Requesting a follow-up interview with the Investigators to clarify or provide any additional information that such party believes is relevant to the investigation or to seek clarification from the Investigator on aspects of the Investigation Report;

Any party asserting new evidence should clearly identify that evidence, including:

- Identifying any new witnesses who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation); and
- Explaining any additional new evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., emails, text messages, social media postings, etc.), understanding that the Investigator lacks the power to subpoena evidence.

Any response to the Statement of Alleged Policy Violations or the Results Notification Memorandum and/or Investigation Report shall not exceed 5,000 words (approximately 20 pages, double-spaced). The Title IX Coordinator will also ensure that each of the parties will receive any response submitted by the other party. Late submissions will not be accepted.

The External Adjudicator has seven (7) business days to review these submitted responses and related documents and make a determination of whether there were improper investigative procedures and/or whether there is new evidence, as defined in this section of the Policy, that should be admitted for purposes of the hearing. In the event the External Adjudicator makes a determination of either improper investigative procedures or the existence of new, necessary evidence, the External Adjudicator shall direct that the appropriate additional steps be taken in response. The decision of the External Adjudicator under this provision may not be appealed, and any further appeals by either party may not be based on the ground of improper investigative procedures.

#### G. Respondent Takes Responsibility: Overview

If the Respondent takes responsibility, then the Title IX Coordinator will forward the documents to the External Adjudicator for a determination of sanctions. The External Adjudicator will determine sanctions in consultation with the Title IX Coordinator and in conformity with this Policy. The Complainant will be informed of the Respondent's decision to take responsibility, and has the opportunity to submit an Impact Statement for consideration by the External Adjudicator. Similarly, the Respondent has the opportunity to submit a Mitigation Statement following their decision to take responsibility for the violation(s). The Impact and Mitigation Statements, each no longer than 1,500 words, must be submitted within three (3) business days.

The Title IX Coordinator will ensure that each of the parties has an opportunity to review any statement submitted by the other party, and within three (3) business days, submit any further statement, no longer than 1,500 words.

All submissions should be sent to the Title IX Coordinator. The Title IX Coordinator will provide any statement(s) to the External Adjudicator. The External Adjudicator will then have ten (10) business days to reach a determination of sanctions.

#### H. Appeal of Results Notification Memorandum

In response to a Results Notification Memorandum, the Complainant may appeal the Title IX Investigators' determination to the External Adjudicator. Any written response to the Results Notification Memorandum will be forwarded by the Title IX Coordinator to the External Adjudicator for review and analysis, along with the Investigation Report and supporting evidence. As above, the External Adjudicator has seven (7) business days to review these doc-

uments and make any of the following decisions: (i) determine that the complaint should proceed to hearing; (ii) send the case back to Title IX Coordinator for further investigation; or (iii) review and reject claims of improper investigative procedure/new evidence. The decision of the External Adjudicator may not be appealed, and any further appeals by either party may not be based on the ground of improper investigative procedures.

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## V. HEARING PROCEDURES INVOLVING STUDENT RESPONDENTS

### A. Hearings Before External Adjudicator: Overview

The External Adjudicator shall hear all claims of sexual misconduct, harassment, and discrimination involving student Respondents pursuant to the procedures set forth in this Policy. The External Adjudicator will determine responsibility and decide sanctions, if appropriate, after a finding of responsibility. In cases brought under the Policy, the evidentiary standard of preponderance of evidence will be used for the sexual misconduct-related violations. In addition, if a student Respondent admits responsibility, the External Adjudicator will decide sanctions. In matters involving alleged violations for which a student Respondent has accepted responsibility, in addition to alleged violations that are proceeding to a hearing, the External Adjudicator will delay making all sanction recommendations until reaching a determination as to responsibility for the alleged violations proceeding to hearing.

### B. Role of Title IX Coordinator

The Title IX Coordinator will refer the written complaint, if any, the Statement of Alleged Policy Violations, the Investigation Report, and the response, if any, to the External Adjudicator. The External Adjudicator is supported by the Title IX Coordinator, who will be present during the hearing, to serve as a resource for the External Adjudicator on issues of policy and procedure, and to see that policy and procedure are appropriately followed throughout the hearing. In that role, the Title IX Coordinator may request that the College's legal counsel be present during any meeting or hearing. If the External Adjudicator determines, by a preponderance of the evidence, that the Respondent has violated the Policy, the External Adjudicator, in consultation with the Title IX Coordinator, will determine the appropriate sanction.

### C. Scope of Hearing

The External Adjudicator may only find responsibility for claims or supporting allegations that appear on the Statement of Alleged Policy Violations prepared by the Title IX Coordinator. In cases involving complaints against students where related complaints are submitted to the Title IX Coordinator and the Dean of Students Office pursuant to the Student Code, the investigation and/or hearing of both the sexual misconduct, harassment and/or discrimination complaint and the Student Code violation(s) will be decided by the External Adjudicator, as discussed herein.

### D. Hearing Protocols

#### 1. Timing

The External Adjudicator will conduct a prompt, thorough, and unbiased hearing. Hearings will be held as soon as practicable, normally within two-to-four weeks of circulation of the SAPV/RNM and Investigation Report, including between semesters subject to the availability of witnesses, etc. The parties will receive notice of any delay of convening a hearing.

#### 2. Review and Consideration of Evidence

The External Adjudicator will base its determination whether behavior constitutes sexual misconduct, harassment, and/or discrimination under this Policy on the evidence presented. With respect to other violations of the Student Code, the External Adjudicator will consult with the student dean advising the Judicial Council. The External Adjudicator will invite the Complainant and Respondent to appear before it, and will hear and question witnesses, if there are any. The Complainant and Respondent may be present at the hearing if they choose or they may choose to participate in the hearing remotely. However, neither party shall be allowed to directly question or cross-examine the other or any witness during the hearing. Five (5) business days prior to the hearing, questions, if any, shall be submitted to the External Adjudicator by both parties in writing, who will then decide whether those questions are

relevant to the matter and in compliance with Title IX requirements; this does not preclude either party from submitting additional written questions during the hearing for the External Adjudicator's consideration. Questions submitted by either party will not be shared with the other party.

In addition, ten (10) business days prior to the hearing, the parties shall, for the External Adjudicator's consideration, provide the names of any material witnesses, if any, they suggest be called and a summary of information each witness would provide through his/her testimony. (Character witnesses are not permitted.) Names of witnesses provided by the Complainant/Respondent will be shared with the other party. Further, the Complainant shall be offered the opportunity to participate in the hearing without being in the presence of the Respondent, or accommodations can be made so the Complainant may participate in the hearing without facing the Respondent. The External Adjudicator will conduct a hearing and will review whatever information it deems necessary to assist it in reaching a determination as to the merits of the charge, including information obtained by the Investigators during the investigation. The parties and witnesses will address only the hearing officer, and not each other. Only the hearing officer may question witnesses and parties. The External Adjudicator will prohibit questions of either party or any witness that are repetitive, irrelevant or harassing. Parties are allowed to note, in writing only, any objections to questions posed at the hearing; they will do so by keeping a running written record of any objections during the hearing, and they may not object to questions by speaking. Only at the conclusion of the hearing will parties provide the record of their objections, if any, to the hearing officer, for inclusion in the record. Although courtroom rules of evidence and procedure will not apply, the hearing will be conducted in a respectful manner that promotes fairness and accurate factfinding.

The Title IX Coordinator will request the attendance of all the witnesses whose testimony the External Adjudicator has determined was within the hearing scope. The Title IX Coordinator will coordinate to have the investigator present at the hearing for questions regarding the investigation and the investigation Report.

The College cannot compel parties or witnesses (with the exception of the Investigator) to testify in the hearing. Any witnesses' decision not to participate will not be a reason to cancel or postpone a hearing. In cases where the credibility of a witness is not significant to the determination of a particular disputed issue and that witness does not appear at the hearing, the External Adjudicator may determine what weight to give to their statements from the investigation report. All witnesses other than the parties will attend the hearing only for their own testimony.

The parties are expected not to spend time on undisputed facts or evidence that would be duplicative.

### 3. Review and Consideration of "New" Evidence

If the External Adjudicator determines that "new" evidence that did not come to light during the investigation has been presented during the hearing, the External Adjudicator may adjourn the hearing for a period that the External Adjudicator deems appropriate to enable the Complainant and/or Respondent to respond to such evidence. Evidence is considered "new" only if the External Adjudicator finds the evidence is relevant and important and could not with a reasonable effort have been discovered earlier by the party and provided to the investigator.

### 4. Privacy of Proceedings

The hearings will be closed, except to the Complainant and the Respondent, their respective advisor/support person and their respective Case Manager. The advisor/support person may consult with the party during the hearing but may not address the External Adjudicator. Once the hearings have ended and the process of deliberation has begun, the meeting will be closed to all but the External Adjudicator, the Title IX Coordinator, and the College's legal counsel (as appropriate).

### 5. Impact and Mitigation Statements

Within two (2) business days of the close of the hearing, either party may submit a separate Impact or Mitigation statement, no longer than 1,500 words, that will only be read and considered by the External Adjudicator upon a finding of responsibility. These statements should be sent to the Title IX Coordinator, who will forward the submis-

sions to the External Adjudicator upon a finding a responsibility. Upon a finding of responsibility, the Title IX Coordinator will also ensure that each of the parties will receive any statement submitted by the other party.

The Impact Statement is a written statement describing the impact of the Respondent's conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Mitigation Statement is a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed.

#### 6. Decisions by External Adjudicator

Decisions of the External Adjudicator following the hearing will be limited to the following issues: (i) whether a violation of this Policy has occurred; and (ii) upon a finding of responsibility, an appropriate sanction. As soon as a decision on the case is reached, it will be summarized in a writing containing factual findings and the basis for the conclusion, prepared by the External Adjudicator within 10 business days of the hearing.

#### 7. Determination of Sanctions by External Adjudicator

The External Adjudicator, upon a finding of responsibility, shall determine sanctions for student Respondents. The sanctions may include remedial or corrective actions as warranted (including, but not limited to, extension of or expansion or any interim measures already in place). In general:

- Expulsion is the expected sanction for any student who is determined to have committed sexual assault involving sexual penetration and force and/or incapacity.
- Any determination of responsibility for committing sexual assault involving sexual penetration without force or incapacitation may result in a sanction ranging from suspension of no less than one-year or the Complainant's remaining tenure on campus (whichever is longer) to expulsion.
- Any determination of responsibility for committing sexual assault involving sexual contact may result in a sanction ranging from conduct probation up to expulsion.
- Any determination of responsibility for engaging in any other prohibited form of conduct may result in a sanction ranging from conduct warning to expulsion.

The External Adjudicator will not deviate from the range of recommended outcomes unless compelling justification exists to do so. The External Adjudicator may issue a single sanction or a combination of sanctions. In considering the appropriate sanction within the recommended outcomes, the External Adjudicator will consider the following factors:

- (1) the impact of the conduct on the Complainant;
- (2) the impact of the conduct on the community, its members, or its property;
- (3) the Respondent's prior discipline history;
- (4) how the College has sanctioned similar incidents in the past;
- (5) the nature and violence of the conduct at issue;
- (6) whether the Respondent has accepted responsibility;
- (7) whether the Respondent is reasonably likely to engage in the conduct in the future based on pattern and practice evidence heard and considered by the investigator and/or External Adjudicator;
- (8) the need to deter similar conduct by others; and
- (9) any other mitigating or aggravating circumstances, including the College's values.

Absent compelling justifications, if the Respondent has previously been found responsible under College policy to have engaged in the same or similar conduct in the past, the sanction will be expulsion.

The following list of sanctions is illustrative rather than exhaustive, and the College reserves the right to impose other reasonable sanctions or to combine sanctions as it deems appropriate:

**Conduct Warning**—A written notification that a violation of the Student Code occurred and that any further responsible finding of misconduct may result in more severe disciplinary action. Warnings are typically recorded for internal purposes only and are not considered part of a student's permanent student conduct record. Though disclosed with a student's signed consent, a student who receives a warning is still considered in good standing at the College.

**Conduct Probation**—A written notification that indicates a serious and active response to a violation of the Student Code. Probation is for a designated period of time and includes the probability of more severe sanctions, if found responsible for additional violations of the Student Code, including suspension or expulsion from the College. Notification of probation is considered a change in status and will normally be sent to parents. Probation may also include restrictions from certain activities, such as registered parties, or all activities with alcohol.

**Loss of Privileges**—Denial of the use of certain College facilities or the right to participate in certain activities or to exercise certain privileges for a designated period of time.

**Residential Relocation or Suspension from Housing**—Relocation is the reassignment of a student from one living space to another. Residential Suspension is the removal of a student from on-campus housing. Relocation and Residential Suspension are typically accompanied by the loss of privileges regarding the visitation to specific residential areas for a specified period of time. The College may take such action for remedial, rather than disciplinary purposes. These actions may also be part of interim measures.

**Educational Requirements/Referrals**—The College reserves the right to impose counseling or substance assessments or other required educational sanctions.

**College Suspension**—The separation of a student from the College for a specified period of time, after which the student is eligible to return. Conditions for re-enrollment may be required and will be included in the notification of suspension.

During the period of suspension, the student may not participate in College academic, co-curricular, or extra-curricular activities; may be banned from all property owned or operated by the College, as well as the other Claremont Colleges. Students who are suspended may not be on campus without specific, written permission of the Dean of Students or designee.

Suspension is for a designated period of time and includes the probability of more severe sanctions, including expulsion, if found responsible for violations of the Student Code. Notification of suspension will normally be sent to parents, as it results in a change of status.

**Expulsion**—Expulsion is the permanent separation of the student from the College. Students who have been expelled may not be on campus without specific, written permission from the dean of students or designee. Notification of expulsion will normally be sent to parents, as it results in a change of status.

#### 8. Other Remedial Decisions by External Adjudicator

The External Adjudicator should also consider other remedial actions that may be taken to address and resolve any incident of discrimination or harassment and to prevent the recurrence of any discrimination, including strategies to protect the Complainant and any witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any witnesses, and the broader student body; and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

#### 9. Transmission of External Adjudicator's Decision and Report

In the case of student Respondents, the External Adjudicator will communicate their decision and hearing report in writing to the Title IX Coordinator within 10 business days. The External Adjudicator and Title IX Coordinator may

communicate during this period if there any outstanding issues that require clarification or explication. Once the decision and report by the External Adjudicator is received by the Title IX Coordinator, the Title IX Coordinator will inform each of the parties simultaneously and provide in writing the decision and hearing report. The Complainant's copy of the decision, report and details of the sanction(s) imposed on the Respondent, if any, may be limited in the copy of the External Adjudicator's report given to Complainant due to Respondent's FERPA or other applicable privacy rights. A copy of the decision and report will also be provided to the Vice President for Student Affairs/Dean of Students who will also enter the decision into the Respondent's record and will be placed in permanent confidential records in the Dean of Students office and available to the Title IX Coordinator and External Adjudicators.

The sanction(s) imposed will be implemented immediately and will be in effect pending the outcome of any appeal.

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## VI. APPEAL PROCEDURES INVOLVING STUDENT RESPONDENTS

Either party may appeal the determination of responsibility or sanction(s) by the External Adjudicator in writing to the Vice President for Student Affairs/Dean of Students or its designee. The appeal must be filed within 10 business days of receiving the written notice of outcome.

Dissatisfaction with the outcome of the hearing is not grounds for appeal. The limited grounds for appeal are as follows:

### A. Improper Hearing Procedure.

The party may appeal if the procedures outlined in the Policy are violated. The Vice President/Dean of Students shall consider

1. Whether provisions of the Policy were violated in such a clear manner as to deny the appealing party consideration of the party's position during the hearing; and
2. Consideration of the party's position would have led to a different finding concerning the alleged violation of the Policy.

### B. New Evidence.

During the standard hearing process, sufficient time is allowed to gather all available evidence. However, in extraordinary circumstances a party may appeal if new evidence becomes available. The Vice President/Dean of Students shall consider

1. Whether the evidence was genuinely unavailable and could not have been made available through the appellant's diligent efforts at the time of the original hearing; and
2. Whether the evidence would have led to a different conclusion had it been available.

### C. Sanctions.

The sanctions imposed were grossly disproportionate to the violation committed.

Requests for appeal and responses to the same shall not exceed 5,000 words (approximately 20 pages double-spaced). Non-conforming submissions will not be considered beyond the first 20 pages. Late submissions will not be accepted. The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. Upon receipt of an appeal, the Vice President/Dean of Students will notify and provide a copy of the appeal to the other party. That party shall then have an opportunity to respond in writing to the appeal; any response must be submitted within five (5) business days from receipt of the appeal.

The appeal consideration will be conducted in an impartial manner by the Vice President/Dean of Students. In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The Vice President/Dean of Students shall consider the merits of an appeal only on the basis of the three (3) grounds for appeal and supporting information provided in the written request for appeal and the record of the original

hearing. The Vice President/Dean of Students can affirm the original findings, alter the findings, and/or alter the sanctions, depending on the basis of the requested appeal.

If the appeal is granted based on procedural error(s) that materially affected the outcome of the hearing, the Vice President/Dean of Students will return the case to the External Adjudicator for additional review or forward the case for a new hearing, which may be heard by an alternate External Adjudicator if the Dean of Students finds that to be appropriate.

In the case of new and relevant information, the Vice President/Dean of Students can recommend that the case be returned to the original adjudicator to assess the weight and effect of the new information and render a determination after considering the new facts.

Absent extenuating circumstances, the Vice President/Dean of Students will simultaneously and in writing communicate the result of the appeal to the Complainant and Respondent within 20 business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

The parties will receive notice of any delay of written notice of any appeal decision. Any sanctions imposed shall remain in effect while the appeal is being considered. In cases where the appeal results in reinstatement to the College or of privileges, all reasonable attempts will be made to restore the individual to their prior status, recognizing that some opportunities lost may be irretrievable.

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## VII. SPECIAL PROVISIONS

### A. Attempted Violations

In most circumstances, the College will treat attempted conduct as if that conduct had been completed.

### B. College as Complainant

As necessary, the College reserves the right to initiate a complaint, to serve as Complainant, and to initiate proceedings without a formal complaint by the subject of the misconduct.

### C. Alcohol and Substance Use

The use of alcohol or other drugs will never function as a defense for any behavior that violates College policy.

### D. Good Samaritan/Amnesty Policy

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 the College for certain limited 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. The College 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."

### E. Past Sexual History

The past sexual history of a party will generally not be admissible by the other party in an investigation or hearing unless such information is determined to be highly relevant by the Title IX Coordinator. For example, the investigator or External Adjudicator will not consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations. In addition, the investigator or External Adjudicator will not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual. The mere fact that the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual. Before permitting consideration of this

type of evidence, an investigator or External Adjudicator officer will provide a written explanation to the parties as to why consideration of the evidence is consistent with this clause.

If the party believes the past sexual history of the other party is relevant to the investigation and/or hearing they must submit a written request to the Title IX Coordinator explaining the nature of the information and why the information is relevant to the investigation and/or hearing. The External Adjudicator, in consultation with the Title IX Coordinator, will review the request and render a decision.

#### **F. Respondent's Prior Conduct History**

Generally, any previous College policy violation(s) by the Respondent are generally not admissible as information about the present allegation. However, the Title IX Coordinator may supply information about previous behavior and/or complaints to the Investigator(s) or the External Adjudicator if:

1. The Respondent was previously found to be responsible for a similar violation; or
2. The information indicates a pattern of behavior by the Respondent and substantial conformity with the present allegation.

A Respondent's prior conduct will be taken into consideration by the External Adjudicator or appropriate vice president (when applicable) when determining what sanction(s) to recommend or impose. See the section on Sanctions.

#### **G. Recording of Proceedings**

The College will audio record the hearing, but will not record any related deliberations by the External Adjudicator. The College will maintain a copy of that recording and will provide the parties with access to a copy of a transcript of that recording, upon request. The recording and any related transcript are subject to the same protections as other documents related to the hearing and may not be shared or disclosed outside of the parties and their support persons. The parties and any support persons present are not permitted to record the proceedings under any circumstances.

#### **H. Record Retention**

The Title IX Coordinator will review and retain copies of all reports generated as result of investigations. These records will be kept confidential to the extent permitted by law. Records of investigations and hearings are maintained by the College for five (5) years as indicated below.

If the Respondent is a student, the records will be maintained for five (5) years past the student's graduation or if the student leaves the College before graduation, for five (5) years past their original expected graduation date.

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## **VIII. RIGHTS OF PARTIES INVOLVED IN A PROCEEDING UNDER THESE POLICIES**

### **A. Complainants are afforded the following rights:**

1. To be treated with respect, dignity, and sensitivity throughout the process.
2. To be advised and informed of the support services available from the College, including, but not limited to, the Case Manager, and those provided by the Project Sister rape crisis counselor, Monsour Counseling and Psychological Services.
3. For student Complainants, to confidentiality and protection under the Family Education Rights and Privacy Act (FERPA). For all Complainants, the College will make all reasonable efforts to ensure the preservation of privacy, restricting access to information to those with a legitimate need to know.
4. To be informed of the College's Policy and procedures related to discrimination, harassment, and sexual misconduct.
5. To a prompt and thorough investigation of the allegation(s).
6. To challenge the appointment of the Investigator(s) or the External Adjudicator if a conflict of interest is present.



7. To participate or decline to participate in the process related to a discrimination, harassment, and/or sexual misconduct complaint with the understanding that the process may continue without their involvement and that the Investigator and/or External Adjudicator will determine an outcome with the information available to it.
8. To appeal the decisions and/or sanctions made pursuant to this Policy.
9. To be notified, in writing, of the case resolution – including the outcome of any appeal.
10. To report the incident to law enforcement or civil authorities if one wishes to do so.
11. To understand that information collected in this process may/could be subpoenaed for a criminal or civil proceeding.
12. To have a support person/advisor.
13. To have a Case Manager.

**B. Respondents are afforded the following rights:**

1. To be treated with respect, dignity, and sensitivity throughout the process.
2. To seek support services through the College, including, but not limited to, the Case Manager and those through Monsour Counseling and Psychological Services.
3. For student Respondents, to confidentiality and protection under the Family Education Rights and Privacy Act (FERPA). For all Respondents, the College will make all reasonable efforts to ensure the preservation of privacy, restricting access to information to those with a legitimate need to know.
4. To be informed of the College's Policy and procedures related to discrimination, harassment, and sexual misconduct.
5. To a prompt and thorough investigation of the allegation(s).
6. To challenge the appointment of the Investigator(s) or the External Adjudicator if a conflict of interest is present.
7. To participate or decline to participate in the review procedure, with the understanding that the process will continue regardless and the Investigator and/or External Adjudicator will determine an outcome with the information available to it.
8. To appeal the decision and/or sanctions made pursuant to this Policy.
9. To be notified, in writing, of the case resolution – including the outcome of the appeal.
10. To understand that information collected in this process may be subpoenaed in criminal or civil proceedings.
11. To have a support person/advisor, who may be an attorney.
12. To consult with an attorney, at their own expense, at any stage of the process if they wish to do so
13. To have a Case Manager.

## IX. THE COLLEGE'S EXTERNAL REPORTING OBLIGATIONS

### A. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ( the "Clery Act")

#### 1. Statistical Reporting:

Certain College officials have a duty to report certain misconduct for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

## 2. Timely Warning:

Complainants should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. For purposes of the Timely Warning requirement, the College will not disclose a Complainant's name. However, the College will provide enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed in the paragraph above.

## B. FERPA

The outcome of a campus hearing is part of the educational record of the Respondent, if they are a student, and the employee record if they are a faculty or staff member. The educational records of students are protected from release under a federal law, FERPA. The College complies with FERPA regulations regarding the privacy of student records and observes the following exceptions to FERPA as mandated by the Clery Act:

- The Complainant(s) in a non-consensual sexual contact/intercourse incident have the right to be informed of the finding, and sanction(s) of the investigation or hearing, in writing, except that any documents prepared for or as a result of any investigation and/or hearing shall remain protected from re-disclosure.
- The Complainant(s) in sexual exploitation, sexual harassment, stalking, relationship violence and any other gender-based offense have the right to be informed of the finding, in writing, and to be informed of any sanction(s) that directly relate to them, and to essential facts supporting the outcome when the outcome is "responsible" (and the underlying offense is a crime of violence as defined below and in 34 C.F.R. 99.39) and/or it is equitable to share the essential findings with all parties.
- The College may release publicly the name, nature of the violation and the sanction(s) for any student who is found in violation of a College policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, intimidation (which may encompass stalking and/or bullying), hazing, destruction/damage/vandalism of property and kidnapping/abduction. The College will release this information to the Complainant in any of these offenses regardless of the outcome.

## X. SEXUAL MISCONDUCT PREVENTION AND RISK REDUCTION

### A. Prevention:

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner and yourself. These suggestions may help you avoid committing a nonconsensual sexual act and reduce your risk of being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly communicate their intentions to you.
2. Understand and respect personal boundaries. Do not pressure a potential partner.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity, then you DO NOT have consent and you should stop.
4. If you think you are receiving unclear or conflicting messages from your partner, this is a clear indication that you should stop, defuse any sexual tension and communicate better.
5. Don't take advantage of someone's drunkenness, drugged, or otherwise incapacitated state, even if they did it to themselves.

6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically equal consent to any other form of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language. If you are not sure, stop.

### **B. Risk Reduction**

Risk reduction tips can, unintentionally, take victim-blaming tone. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for such conduct, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act.

1. If you have sexual limits, make them known as early as possible.
2. If you do not want to engage in a particular activity, tell the other person "NO" clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor, if you can do so safely.
4. If someone is nearby, ask for help or if it is safe to do so, text or call someone.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to enter a dangerous situation. Respect them when they do.

## **APPENDIX A: Overview of Initial Review Checklist**

During the investigation/adjudication of a sexual misconduct report, the Title IX Coordinator or its designee(s) will:

- assess the nature and circumstances of the allegation;
- address immediate physical safety and emotional well-being of the Complainant and the College community;
- discuss with the Complainant the range of interim measures and remedies, including options for no-contact orders, changes in living, academic, transportation, working situations;
- provide the Complainant with information about on- and off-campus resources, including the College-appointed support options, and visa and immigration assistance, as appropriate;
- provide information about their student financial aid options, as appropriate;
- obtain the Complainant's expressed preference for the manner of resolution and assess any barriers to proceeding;
- provide the Complainant with an explanation of the anticipated time frames for the resolution process if the Complainant wished to move to an investigation;
- provide the Complainant with an explanation of the limitations on the College's response should the Complainant choose to remain anonymous;
- provide information about a sexual assault and harassment policy Case Manager and information about an adviser of their choice, including legal counsel;
- determine if concerns exist for discrimination or harassment based on other protected classes;
- explain the College's policies for confidentiality and prohibiting retaliation, as described in the Policy and provide a writing explaining confidentiality;

- explain the difference between confidential and non-confidential resources;
- assess the reported conduct for the need for a timely warning notice under federal law;
- determine if pattern of evidence or other similar conduct by Respondent exists;
- determine if any issues of academic freedom exist, which may be reviewed by the Dean of the College or designee;
- submit non-identifying information about the report to Campus Safety for entry into the College's daily crime log if the report includes a Clery-reportable crime;
- provide the Complainant with a written explanation of the Complainant's rights and options as set forth in this Policy, including, but not limited to:
  - the right to report, or decline to report, the incident to law enforcement if the conduct is potentially criminal in nature. The College is available to assist in this process;
  - the right to obtain a "no-contact" order from the College, or local authorities;
  - the right and importance of seeking medical treatment to address physical health and to preserve evidence;
  - the right to file a complaint through the applicable internal complaint resolution process;
  - the right to receive an explanation of the internal complaint resolution process and the preponderance of the evidence standard of proof used to resolve the complaint ("more likely than not");
  - the right to be provided a prompt, fair, and impartial investigation and resolution; and
  - the right to receive an explanation of the possible sanctions against Respondents.
- provide the Respondent with a written explanation of the Respondent's rights and options as set forth in this Policy, including, but not limited to:
  - the right to participate, or decline to participate, in any investigation and hearing;
  - discuss with the Respondent the range of interim measures and remedies, including options for no-contact orders, changes in living, academic, transportation, working situations;
  - provide the Respondent with information about on- and off-campus resources, including the College-appointed support options, and visa and immigration assistance, as appropriate;
  - the right to receive an explanation of the internal complaint resolution process and the preponderance of the evidence standard of proof used to resolve the complaint ("more likely than not");
  - the right to be provided a prompt, fair, and impartial investigation and resolution; and
  - the right to receive an explanation of the possible sanctions against Respondents.