

RENSSELAER POLYTECHNIC INSTITUTE

SEXUAL MISCONDUCT AND TITLE IX

POLICIES, PROCEDURES AND GUIDELINES

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RENSELAER POLYTECHNIC INSTITUTE'S SEXUAL MISCONDUCT AND TITLE IX POLICIES, PROCEDURES AND GUIDELINES

I. INTRODUCTION

A. Statement of Intent

Rensselaer Polytechnic Institute is committed to maintaining a safe and healthy learning, living, and working environment in which no member of the Rensselaer community is, on the basis of sex, sexual orientation, gender identity or gender expression, excluded from participation in, denied the benefits of, or subjected to discrimination in any Institute program or activity. Sexual Misconduct, including but not limited to Sexual Harassment, Sexual Violence, Intimate Partner Violence and Stalking, are forms of illegal discrimination in that they deny or limit an individual's ability to participate in or benefit from the Institute's programs or activities.

In support of the overall goals of Rensselaer Polytechnic Institute, the purpose of the Sexual Misconduct and Title IX Policies ("Policies") are to maintain a campus living, learning and working environment that supports the Institute's educational mission, maintains respect and dignity for members of the Rensselaer community, and protects the rights of all members of the campus community. The Policies are intended to foster personal responsibility, high ethical values, individual accountability, and civility toward others.

Rensselaer Polytechnic Institute's actions and practices will not be based on stereotypical characterizations of sex or gender. Rensselaer prohibits discrimination on the basis of gender or sex in the working, living and learning environments. Discrimination on the basis of sex or gender includes sexual harassment and sexual violence. Sex discrimination, including sexual misconduct, sexual harassment, sexual violence and sexual assault, is prohibited by federal and state law, and Institute policy. The Policies apply to all members of the Rensselaer community.

The Policies embrace several core philosophies: respect for freedom of inquiry and constructive feedback; a conviction that honesty and integrity are key values to the campus community; and the belief that all members of the Rensselaer community should be part of a campus environment that is inclusive, respects differences and embraces diversity of culture, gender, religion, race, ethnicity, socio-economic background, nationality, age, lifestyle and ability.

Rensselaer is also committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of Complaints of Sexual Misconduct. In furtherance of this commitment, the Policies set forth the available resources, describe prohibited conduct, and establish procedures for responding to Reports of Sexual Misconduct.

The Policies set out here reflect Rensselaer's commitment to a safe and non-discriminatory educational environment, consistent with Title IX of the Educations Amendments Act of 1972 ("Title IX"), the Violence Against Women Act ("VAWA"), and New York State Education Law 129-B. The Policies define gender-based and sexual misconduct and explain Title IX, highlight available resources for students, and set procedures for addressing alleged gender-based misconduct.

The Title IX Policy is intended to comply with the U.S. Department of Education regulations for colleges and universities that address sexual assault and other gender-based misconduct. The regulations cover certain and specific forms of gender-based misconduct. In addition, Rensselaer maintains a "Sexual Misconduct Policy" for other types of misconduct not covered by the U.S. Department of Education's regulations. Both policies are important to creating and supporting an Institute community that rejects all forms of gender-based misconduct.

B. An Orientation to Rensselaer's Policies

This section provides information about Title IX and an orientation to the Institute's two Policies: the Sexual Misconduct Policy and the Title IX Policy. Students and others who file a report of misconduct pursuant to these Policies need not designate which Policy applies to their case. The Title IX Coordinator and their department is available to assist with any questions and are responsible for determining which policy applies.

Title IX of the Educations Amendments Act of 1972 is the federal law that prohibits sex discrimination by an education institution that receives federal funding. This law has been interpreted by the courts and the U.S. Department of Education to require colleges and universities to take certain steps to prevent and respond to sexual harassment, sexual assault, and other gender-based misconduct.

The Title IX regulations issued by the U.S. Department of Education cover some occurrences of sexual harassment and other gender-based misconduct. They, however, do not cover all of the types of misconduct or places in which misconduct or discrimination may occur, nor fully reflect the Institute's commitment and its obligations under state and local law.

For this reason, Rensselaer Polytechnic Institute has two policies: the Title IX Policy which addresses cases covered by the U.S. Department of Education Regulations, and the Sexual Misconduct Policy that addresses misconduct not covered by the Regulations.

Please note: The procedures and guidelines for both Policies are similar. The basis for reference to two policies is to make clear that conduct that may not meet the U.S. Department of Education's definitions or guidance, may still be adjudicated by Rensselaer pursuant to other state or local laws or Rensselaer's commitment to an inclusive environment.

C. Jurisdiction

The U.S. Department of Education's Regulations apply to gender-based misconduct that meets the four following criteria:

- 1) affects a student/individual (or parent on behalf of a student under 18) who, at the time the report is received, was participating in or attempting to participate in a Rensselaer education program or activity;
- 2) involves an allegation of misconduct towards a person in the United States by a current¹ Rensselaer student, faculty or staff member;
- 3) occurs:
 - a) on any Rensselaer-owned property in the United States;
 - b) in connection with any Rensselaer program, activity, or recognized student organization (including athletic teams, fraternities and sororities); **or**
 - c) in a location, at an event, or under circumstances over which the Institute exercises substantial control over the accused Rensselaer student and the surrounding context; **and**
- 4) involves allegations of gender-based misconduct that would be considered "severe, pervasive and objectively offensive" under the Title IX regulations.

¹ A current Rensselaer student as used here, refers to a Rensselaer student actively enrolled at the Institute or one who is seeking admission or readmission to any program.

Distinct from the U.S. Department of Education Regulations, the Rensselaer Sexual Misconduct Policy applies to alleged misconduct that occurs off campus, including outside of the United States; involves Complainants who are not participating in or attempting to participate in a Rensselaer education program or activity; or misconduct that is unwanted, even if the conduct does not meet the Title IX regulation standard of being “severe, pervasive and objectively offensive.”

Rensselaer’s Sexual Misconduct Policy governs misconduct that:

- 1) occurs in connection with the Institute’s program or activities;
- 2) creates a hostile environment for Institute students; **or**
- 3) involves an accused person who is a Rensselaer student.

Both Policies apply regardless of a person’s gender, gender identity, gender expression, sex, sexual orientation, age, race, nationality, class status, religion, disability, pregnancy, predisposing genetic characteristics, military status, criminal convictions, domestic violence status, familial status, or other protected status.

In the event that a report involving a student at another university or school is received by Rensselaer, the matter may be investigated and addressed within the applicable Rensselaer policy and the matter will be forwarded to the other university or school. Rensselaer will seek to work collaboratively with the other university or school.

If you are a student at the Institute filing a complaint against an **employee or faculty member** of the Institute, any *finding* of a violation of Title IX, or Institute policy will be administered in accordance with the relevant policies applicable to employees and faculty, including the Human Resource Policies and the Rensselaer Faculty Handbook.

Allegations of misconduct involving faculty and staff that do not meet the definition of Sexual Harassment under the Title IX Policy or the Sexual Misconduct Policy may be investigated pursuant to any relevant and appropriate faculty and staff related policy.

The procedures set forth in the Policies are administrative in nature and are separate and distinct from the criminal and civil legal systems. The Institute encourages Complainants to pursue all remedies available to them, including reporting incidents of potential criminal conduct to law enforcement. If the conduct in question is alleged to be a violation of both Institute policy and the law, the Institute will proceed with its normal process, regardless of action or inaction by outside authorities. Decisions made or sanctions imposed through these or other Institute 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 accused.

D. Period of Limitations

A Report of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the filing of the Report. However, Rensselaer strongly encourages individuals to file a Report promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation.

A Report of Sexual Misconduct will be investigated and adjudicated using the procedural provisions of the policy of Rensselaer in effect at the time of the report and the substantive provisions in effect at the time the conduct allegedly occurred.

E. Revocation by Operation of Law

If any portion of the Education Amendments Act of 1972, N.Y. Education Law, or other regulating authority is stayed or held invalid by a court of law, then the invalidated elements of the policy that implement such invalidated law or regulation will be deemed revoked as of the issued date of the opinion or order of such court.

F. Student Sexual Misconduct Bill of Rights

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an Advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

At a Hearing, Students also have the following procedural rights:

1. The right to an Advisor of their choice;
2. The right to be informed of the rules for participation at a Hearing;
3. Access to directly-related available evidence in the investigative record; and
4. Right to make an impact statement regarding sanctions.

G. Rensselaer's Title IX Department

The Title IX Coordinator is responsible for overseeing the application of both Policies and the coinciding Procedures outlined herein. While these Policies and Procedures identify the Institute office or employee who will typically perform certain roles or duties, the Institute or its officials may designate other Institute offices, employees or personnel to perform any roles or duties described in the Policies and Procedures. The Institute may also, in its sole discretion, assign appropriate non-employees to perform any roles or duties described in the Policies or Procedures.

1. Title IX Coordinators

Name	Karen Fajardo	Jacquelyn Turner
Title	Senior HR Specialist, Employee Relations and Title IX Coordinator	Deputy to the Vice President for Human Resources
Mailing Address	21 Union Street, 2 nd Floor Troy, NY 12180-3352	21 Union Street, 2 nd Floor Troy, NY 12180-3352
Telephone	(518) 276-4093	(518) 276-3980
Email	fajark@rpi.edu	creeci@rpi.edu

2. The Title IX Coordinators' responsibilities include:

- a. Coordinating the Institute's compliance with Title IX;
- b. Overseeing the Institute's response to reports of alleged violations of Rensselaer's policies regarding discrimination and Sexual Misconduct by students, staff, faculty, and third parties;
- c. Coordinating training, prevention and education efforts with regard to discrimination and Sexual Misconduct;
- d. Coordinating periodic reviews of climate and culture with regard to discrimination and Sexual Misconduct;
- e. Identifying and addressing any patterns or systemic problems;
- f. Being knowledgeable of and trained in Institute policies and procedures and relevant state and federal laws regarding discrimination and Sexual Misconduct;
- g. Advising individuals, including a Complainant, a Respondent, a witness, or a third party reporter, about the courses of action available for reporting and responding to discrimination and/or Sexual Misconduct at the Institute, both informally and formally, and in the community;
- h. Coordinating the effective implementation of Supportive Measures;
- i. When appropriate, preparing and filing a Formal Complaint; and
- j. Investigating complaints of Sexual Misconduct as part of the Procedures set forth below.

3. Title IX Liaison

Rensselaer, in its commitment to support non-discrimination and equal opportunity, will appoint Title IX Liaisons for each academic and administrative Portfolio. The Title IX Liaison responsibilities include:

- a. Advising individuals, including a Complainant, a Respondent or a third party, about the courses of action available for responding to discrimination and Sexual Misconduct at the Institute, both informally and formally, and in the community; and
- b. Providing information to Complainants, Respondents, third-party individuals, and the campus community about internal and external care and support services.

4. The Title IX Coordinators, Investigators, Liaisons, Confidential Advisors provided by Rensselaer, Sexual Misconduct Panel; respective Hearing Board members, Appeal Panel members, and other individuals involved in the informal resolution, investigation and adjudication processes related to alleged violations of the Policies will receive annual training in, as applicable, the definitions of Sexual Harassment and Sexual Misconduct; the scope of Rensselaer's education programs/activities; conducting Rensselaer's Informal Resolution Process; discernment of relevant evidence; conducting investigations of sexual violence; and impartiality (including by avoiding prejudgment of the facts, conflicts of interest, bias, or the effects of trauma). Hearing officers/panel members will receive training on issues of relevance of questions and evidence, including training on the relevance of evidence about the Complainant's sexual predisposition or prior sexual behavior. Rensselaer will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Training materials will be posted on Rensselaer's website and will be available for review upon request.

5. Inquiries or Complaints concerning the application of Title IX may be referred to Rensselaer's Title IX Coordinators, Title IX Liaisons, and/or to the U.S. Department of Education's Office for Civil Rights:

**Office for Civil Rights
New York Office
U.S. Department of
Education 32 Old Slip,
26th Floor
New York, NY 10005-2500
Telephone: 646-428-3800
FAX: 646-428-3843; TDD: 800-877-8339
Email: OCR.NewYork@ed.gov**

H. General Policy Statements

1. Non-Discrimination

Rensselaer Polytechnic Institute complies with all federal, state and local non-discrimination laws and is committed to providing a working, living and learning environment free from discrimination and harassment based on race, color, religion, sex, gender, pregnancy, sexual orientation, gender identity, gender expression, age, marital status, national origin, citizenship status, disability, military status, veteran status, genetic information, genetic predisposition, domestic violence victim status, prior record of arrest or criminal conviction or any other basis prohibited by law.

2. Equal Opportunity

Rensselaer Polytechnic Institute is also committed to providing equal opportunities for all persons regardless of actual or perceived race, color, religion, sex, gender, pregnancy, sexual orientation, transgender status, gender dysphoria, gender identity, gender expression, age, marital status, national origin, citizenship status, disability, military status, veteran status, genetic information, genetic predisposition, prior record of arrest or criminal conviction, domestic violence victim status, familial status, reproductive health decision-making, relationship or association with member(s) of a protected class, legal off-premises use of tobacco products, or any other basis prohibited by law. Equal opportunity extends to all aspects of the academic and student life relationship.

3. Sexual Harassment and Sexual Misconduct

Rensselaer Polytechnic Institute is committed to providing a working, living and learning environment free of Sexual Harassment and Sexual Misconduct. Rensselaer prohibits Sexual Harassment and Sexual Misconduct in all of its working, living and learning environments. Sexual Harassment and Sexual Misconduct violate an individual's fundamental rights and personal dignity. Rensselaer considers Sexual Misconduct and Sexual Harassment in all its forms to be a serious offense.

The expectations of the Rensselaer community regarding sexual conduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with another person or persons, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is permission to engage in sexual activity. Individuals who engage in Sexual Misconduct will be subject to disciplinary action, up to and including expulsion or termination.

Employees, including but not limited to, faculty, contingent faculty, research professionals, staff, teaching assistants, teaching and learning assistants and members of the President's Cabinet, are prohibited from having sexual or romantic relationships with students.

4. Retaliation

Rensselaer Polytechnic Institute strictly prohibits retaliation against any person for reporting an allegation of discrimination or Sexual Misconduct, or for filing, testifying, assisting or participating in any manner in any investigation or proceeding involving allegations of discrimination, Sexual Misconduct, or an unethical action. Any person who violates this non-retaliation policy will be subject to disciplinary action.

I. Responsible Employees

All members of the Rensselaer community are strongly encouraged to report information regarding any incident of discrimination, hazing, and Sexual Misconduct, which includes, but is not limited to Intimate Partner Violence, Sexual Violence, Sexual Harassment, and Stalking directly to a Title IX Coordinator or Title IX Liaison. The Institute cannot take appropriate action unless incidents are reported to a Responsible Employee of the Institute. In general, most Rensselaer employees do not have legally protected confidentiality.

Rensselaer's Responsible Employees are all faculty and staff who are not listed in Section II(C), below. The Institute requires that all Responsible Employees share with a Title IX Coordinator or a Title IX Liaison a report of alleged violations of these Policies and other Institute policies that are intended to protect the rights and dignity of the members of the Rensselaer community, including but not limited to discrimination, hazing, and Sexual Misconduct, which includes, but is not limited to Intimate Partner Violence, Sexual Violence, Sexual Harassment, and Stalking, so that the Institute can respond appropriately to end the conduct, prevent its recurrence and remedy its effects.

J. Definitions

1. Report. Refers to any incident or concern regarding gender-based misconduct that is disclosed to the Title IX Coordinator, one of the Deputy Title IX Coordinators or any other Responsible Employee of the Institute regardless of the source.

2. Complaint. A Complaint is a Report of Sexual Misconduct that Rensselaer has conducted an initial inquiry into and has determined contains allegations of conduct that, if deemed true, would violate a provision of Rensselaer's Sexual Misconduct Policy and/or Rensselaer's Title IX Policy.

3. Formal Complaint. A Formal Complaint is a document filed and signed by a Complainant or the Title IX Coordinator, including via e-mail, online, or in other writing, alleging Sexual Misconduct against a Respondent, and requesting that the Institute investigate the allegation(s) of Sexual Misconduct.

4. Complainant. A Complainant is an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct or a violation of Title IX.

5. Respondent. A Respondent is an individual against whom a Complaint or Formal Complaint has been filed.

6. Bystander. A person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the Institute.

7. Investigator. Investigator is a neutral fact-finder who investigates a Complaint.

8. Sexual Misconduct. Under this Policy, Sexual Misconduct is intended to include Dating Violence, Domestic Violence, Intimate Partner Violence, Non-Consensual Sexual Contact, Sexual Assault, Sexual Exploitation, Sexual Harassment, Sexual Violence, and Stalking, as defined by Title IX and Rensselaer policy.

9. Sexual Harassment under Rensselaer's Sexual Misconduct Policy. Sexual Harassment means any unwelcome conduct of a sexual nature, or which is directed at an individual because of that individual's sex, including any conduct or act of a sexual nature perpetrated against an individual without their Consent. According to New York, workplace sexual harassment need not be severe or pervasive but must rise above petty slights or trivial inconveniences. Sexual Harassment can occur between strangers or acquaintances, as well as people involved in an intimate or sexual relationship. Sexual Harassment can be committed by any person, and it can occur between people of the same or different sex or gender. Rensselaer encourages reporting of all Sexual Harassment. Sexual Harassment includes but is not limited to:

- Intimate Partner Violence,
- Sexual Violence,
- Sexual Assault,
- Stalking,
- Quid Pro Quo, and
- Hostile Environment.

10. Sexual Harassment under Title IX. Sexual Harassment is defined under Title IX as unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without their Consent. Sexual Harassment under Title IX can occur between strangers or acquaintances, as well as people involved in an intimate or sexual relationship. Sexual Harassment under Title IX can be committed by any person, and it can occur between people of the same or different sex or gender. Rensselaer encourages reporting of all Sexual Harassment. Sexual Harassment under Title IX includes conduct on the basis of sex that satisfies one or more of the following:

- (1) Quid pro quo – an individual conditioning the provision of an aid, benefit or service on an individual’s participation in unwelcome sexual conduct.
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity.
- (3) Sexual Assault, Dating Violence, Domestic Violence and Stalking.

Sexual Harassment can occur in person, by phone, text message, e-mail or other electronic or written or social medium. Sexual Harassment can be physical, verbal and/or psychological in nature. An aggregation of a series of incidents can constitute Sexual Harassment even if one of the incidents considered on its own would not be considered harassing conduct. Sexual Harassment includes conduct that may also be criminal in nature such as rape, sexual assault, stalking, and other similar offenses. Sexual Harassment also includes Sexual Exploitation, as well as harassing conduct based on a person’s sex, gender, gender identity, gender expression, or sexual orientation.

Intentionally aiding or assisting another person(s) in the commission of Intimate Partner Violence, Sexual Violence, Sexual Misconduct, Stalking, or other unwelcome conduct of a sexual nature also constitutes Sexual Harassment.

11. Sexual Violence. Sexual Violence refers to conduct that involves physical sexual acts perpetrated against a person’s will forcibly or not forcibly, or where a person has not, or is incapable of, giving consent. Examples of Sexual Violence include, but are not limited to Sexual Assault, rape, Intimate Partner Violence, Dating Violence, relationship violence or Domestic Violence.

12. Sexual Assault. Sexual Assault means any actual, attempted or threatened sexual contact with another person without that person’s Consent. Sexual Assault includes but is not limited to: (i) rape and attempted rape, whether oral, anal or vaginal; (ii) intentional and unwelcome sexual touching or fondling, however slight, using any body part or any object, by a person(s) upon another person(s), of a person’s breasts, buttocks, groin, or genitals (with or without clothing), or coercing, forcing or attempting to coerce or force another to touch you, themselves, or a third party on any of these body parts or areas when such touching would be reasonably and objectively offensive; (iii) non- consensual sexual contact; (iv) any sexual act in which there is force, violence, or use of duress or deception upon the victim; (v) any sexual act perpetrated when the victim is unable to give Consent;(vi) sexual intimidation which includes, but is not limited to, threatening (expressly or impliedly) to commit a sexual act upon another person without his or her consent, stalking or cyber-stalking, and engaging in indecent exposure, (vii) incest, and (viii) statutory rape.

13. Dating Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the subject. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

14. Domestic Violence. Felony or Misdemeanor crimes of violence committed by a current or former intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime allegedly occurred, 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 in which the crime allegedly occurred.

15. Intimate Partner Violence. Intimate partner violence is the use of physical, sexual or emotional abuse or threats towards another who is or has been involved in a sexual, dating, domestic or other intimate relationship with the accused. Intimate partner violence may encompass a broad range of behaviors including, but not limited to, threats of and actual physical violence, Sexual Misconduct, emotional violence, attempts to control another, and economic abuse. Such conduct may be intentional or the result of a reckless disregard for the safety, health or welfare of a person. Such behavior can be directed to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.

16. Sexual Exploitation. Sexual Exploitation is defined as behavior that is designed to take advantage of another individual in a sexual way without their consent. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Non-consensual video- or audio-taping of a sexual nature;
- Engaging in voyeurism;
- Exposing one's genitals, or inducing someone to expose his/her genitals in non-consensual circumstances; or
- Posting or sharing, physically or by electronic means, sexually explicit materials, including but not limited to, photos or videos of another person(s) without that person's consent.

17. Stalking. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking activity may be perpetrated in person or through electronic or digital communications or conduct.

18. Hostile Environment: A hostile environment may arise when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening, demeaning, or offensive academic campus, work or living environment.

19. Non-Consensual Sexual Contact. Non-consensual Sexual Contact is defined as any sexual touching, however slight, by a person(s) upon someone else (other person(s)), regardless of gender, that is without their consent, and/or by force. Non-consensual sexual contact includes the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

20. Consent. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following principles are reflected in the Policies definition of Affirmative Consent:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given as the result of coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

21. Incapacitation. Incapacitation refers to the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, sleep, blackouts, and flashbacks. Where alcohol (or another drug) is involved, incapacitation is determined by how the alcohol (or other drug) consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. An individual violates these Policies when they engage in sexual activity with another person when they knew, or reasonably should have known, that the other person was incapacitated.

22. Preponderance of Evidence Standard. The Preponderance of Evidence Standard is a burden of proof that means that the evidence, considered in its entirety, indicates that it is more likely than not the accused has committed the alleged behavior and violated Institute policy.

23. Retaliation. Retaliation means any attempt by any member of the Rensselaer community to penalize, intimidate, or retaliate in any way against a person who makes a Complaint of or who participates or cooperates in an investigation or a hearing for alleged violations of the Sexual Misconduct policies of Rensselaer or Title IX.

24. Supportive Measures. Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Institute's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties of Rensselaer's educational environment, or to deter Sexual Misconduct. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Rensselaer will maintain as confidential any Supportive Measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality does not impair Rensselaer's ability to provide the Supportive Measures.

25. Investigation Record. The Investigation Record includes the Formal Complaint or Complaint, the Investigative Report prepared by the Investigator, evidence collected by the Investigator, and interview transcripts of the Complainant, Respondent and witnesses as redacted by the Title IX Coordinator for compliance with the Policies and applicable law.

26. FERPA. The Family Education Rights and Privacy Act (“FERPA”) is a federal law that protects the privacy of student education records. FERPA grants to students or eligible parents the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to certain disclosures of private education records.

27. Personally Identifiable Information. As defined by FERPA, includes but is not limited to: (i) a Student’s name; (ii) the name of a Student’s parent/s or other family members; (iii) the address of a Student or a Student’s family; (iv) a personal identifier, such as a Student’s social security number, student number, or biometric record; (v) photograph; (vi) telephone number; (vii) other indirect identifiers, such as a Student’s date of birth, place of birth, or mother’s maiden name; (viii) other information that, alone or in combination, is linked or linkable to a specific Student and that would allow a reasonable person in the community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; and (ix) information requested by a person whom the Institute reasonably believes knows the identity of the Student to whom the education record relates.

II. REPORTING AND RESOURCES

This section is applicable to both Policies and is intended to make students aware of the various reporting and confidential disclosure options available to them so they can make informed choices about where to turn should they become a subject of, or witness to, Sexual Misconduct. Rensselaer encourages any one with information of alleged Sexual Misconduct to talk to someone identified in one or more of these groups and to report their concerns to a Title IX Coordinator so that the community has the opportunity to respond effectively to concerns of Sexual Misconduct.

A. How and Where to File a Report of Sexual Misconduct

Because Sexual Misconduct may in some instances constitute both a violation of Institute policy and a crime, and because Rensselaer’s Grievance process is not a substitute for initiating legal action, Rensselaer encourages individuals to report alleged Sexual Misconduct promptly to a Responsible Employee or the Title IX Coordinator, as well as to law enforcement authorities, where appropriate.

Individuals may, however, choose not to report alleged Sexual Misconduct to such campus officials and/or law enforcement authorities. Individuals will not be required to make a Formal Complaint if they choose not to do so. Rensselaer respects and supports the individual’s decision with respect to reporting; nevertheless, the Institute may itself notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue. In cases in which the Complainant chooses not to file a Formal Complaint, a Title IX Coordinator may prepare and file a Formal Complaint if warranted.

If Rensselaer determines that the alleged perpetrator(s) poses a serious and immediate threat to the campus community, the Rensselaer Department of Public Safety, under the auspices of the Clery Act, may be called upon to issue a timely warning to the community. Any such warning should not include any Personally Identifiable Information about the victim. Rensselaer’s Title IX Coordinator may remove a Respondent from its education program or activity if, after conducting an individualized safety and risk analysis, it determines that the Respondent poses an immediate threat to the physical health or safety of one or more individuals arising from allegations of Sexual Misconduct, justifying removal. The Respondent may challenge removal immediately after such a determination is made.

1. Filing a Police Report with Law Enforcement

Individuals may file a police report directly with local law enforcement agencies by dialing 911.

Individuals who want to report a Complaint of Sexual Assault on a New York college campus to the New York State Police may call the dedicated 24-hour hotline at (844) 845-7269. In an emergency, call 911 and ask for the New York State Police.

Individuals may also contact any of the following for assistance in filing a complaint with law enforcement:

- Rensselaer’s Department of Public Safety may be contacted at (518) 276-6611. The Department of Public Safety is available 24 hours a day, 7 days a week.
- Rensselaer’s Title IX Coordinators, Karen Fajardo ((518) 276-4093, Fajark@rpi.edu); or Jacquelyn Turner ((518) 276-3980, CreecJ@rpi.edu).

It is important to note that filing a report or otherwise contacting Rensselaer’s Department of Public Safety does not require the filing of criminal charges nor does it constitute the filing of criminal charges.

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or filing a Complaint with Rensselaer). Individuals who make a criminal complaint may also choose to pursue a Complaint or Formal Complaint with the Institute simultaneously.

A criminal investigation into the matter does not preclude the Institute from conducting its own investigation (nor are the facts or results of a criminal investigation determinative of whether the alleged conduct violates these Policies or any other Rensselaer policy). However, the Institute’s investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, Rensselaer may implement supportive measures and accommodations it deems necessary to ensure the safety of the parties and/or the Rensselaer community.

2. Filing a Report with Rensselaer’s Administration

Individuals may choose not to report Sexual Misconduct to Responsible Employees or the Title IX Coordinator. Rensselaer respects and supports the individual’s decision with regard to reporting; however, if information about Sexual Misconduct comes to the attention of the Title IX Coordinator or a Responsible Employee, the Institute may (1) start an investigation even in the absence of a Formal Complaint; and (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware. While no finding of a Title IX violation will occur without the filing of a Formal Complaint, Rensselaer may determine that a different Rensselaer policy has been violated based upon an investigation stemming from a Report or other information brought to the attention of the Institute.

Anyone wishing to make a Report of an alleged violation of Sexual Misconduct may do so in person, by mail or by email with any one of the following individuals or offices:

Office	Location	Contact Information	Service Availability
Department of Public Safety	Public Safety Building, Visitor Information Center, 15 th Street Footbridge	(518) 276-6611 Blue Emergency Phone Towers on campus	24 hours a day 7 days a week
Dean of Students Office	Academy Hall 4 th Floor, Suite 4600	(518) 276-6266	Monday – Friday 8:30 a.m. – 5:00 p.m.
Title IX Coordinators	Division of HR Gurley Building, 2 nd Fl. 21 Union Street Troy, NY 12180	Karen Fajardo (518) 276-4093 Fajark@rpi.edu Jacquelyn Turner (518) 276-3980 CreecJ@rpi.edu	Monday – Friday 8:30 a.m. – 5:00 p.m.

Vice Provost and Dean, Office of Graduate Education	1516 Peoples Avenue Troy, NY 12180	(518) 276-8433	Monday – Friday 8:30 a.m. – 5:00 p.m.
Vice Provost and Dean, Office of Undergraduate Education	Walker Laboratory Bldg. Suite 4010 Troy Campus	(518) 276-2244	Monday – Friday 8:30 a.m. – 5:00 p.m.

If an employee of the Department of Public Safety or any other Responsible Employee of the Institute receives a report of alleged Sexual Misconduct, that employee must and will refer the matter to Rensselaer’s Title IX Coordinators.

Individuals may also submit an anonymous Report of Sexual Misconduct by visiting <https://sexualviolence.rpi.edu>. Individuals who choose to submit anonymous Reports are advised that it may be difficult for the Institute to follow up or take action based on anonymous reports, especially where corroborating information is not available or is limited. Anonymous reports, however, may be used for purposes of compliance with Rensselaer’s obligations under the Clery Act.

B. Care and Support Services

Rensselaer is committed to treating all members of the community with dignity, care and respect. Any individual who experiences or is affected by Sexual Misconduct will have access to care and support through the Institute. Supportive Measures and accommodations are also available to all parties (see Section III (D)). Rensselaer recognizes that deciding how to respond to discrimination, harassment, and/or Sexual Misconduct can be difficult.

Rensselaer encourages all individuals to seek the support of and use all available resources on- and off- campus, regardless of when or where the incident occurred. There are both confidential and non-confidential care and support resources available.

C. Confidential Resources

Confidential care and support resources are individuals who, by the nature of their work, are required by law to keep information shared with them confidential and who cannot provide information revealed to them to another person without the express permission of the individual sharing the information. These campus and community professionals include medical providers, mental health providers, ordained clergy, rape crisis counselors, and attorneys representing a Complainant or Respondent. These individuals are prohibited by law from breaking confidentiality unless there is an imminent threat of harm to self or others. However, when a report involves suspected abuse of a minor under the age of 18, some of these confidential resources may be required by state law to notify child protective services and/or local law enforcement.

1. On-Campus Confidential Resources:

The medical/counseling services listed below are available on campus and will provide confidentiality if requested.

Office	Location	Contact Information
Student Health and Wellness	Academy Hall	Portal: https://rpi.studenthealthportal.com/
Medical and Health Education	Academy Hall Suite 3200	(518) 276-6287
Mental Health and Counseling Services	Academy Hall Suite 4100	(518) 276-6479.

After normal business hours, holidays and weekends, call Public Safety and request the counselor on call	Public Safety Building, Visitor Information Center, 15 th Street Footbridge	(518) 276-6611
Religious Affairs Chaplains Office	Rensselaer Union 3 rd Floor	(518) 276-6518

2. Off-Campus Confidential Resources:

There are many confidential resources available to individuals in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on- or off- campus.

Organization	Location	Contact Information	Services: 24 hours a day/ 7 days a week
St. Peter's Health Partners' Samaritan Hospital Emergency Department	2215 Burdett Ave. Troy, NY, 12180	(518) 271-3424	<u>Faculty, Staff and Students</u> <i>Sexual Assault Forensic Exams are performed free of charge and without contacting the person's health insurance plan.</i>
Or go to the nearest hospital emergency department.			
Sexual Assault and Crime Victims Assistance Program for Rensselaer County (SACVAP)	Samaritan Hospital 2215 Burdett Ave. Troy, NY 12180	24-hour Sexual Assault Hotline: (518) 271-3257	<u>Faculty, Staff and Students</u> Counseling, Support, Information and Referral Services (This is a Free service)
Crime Victim and Sexual Violence Center, Albany County	Albany County Office Building 112 State Street Room 1010 Albany, NY 12207	24-Hour Sexual Assault Hotline: (518) 447-7716 cvsvc@albanycounty.com	<u>Faculty, Staff and Students</u> Counseling, Support, Information and Referral Services (This is a Free service)
New York State Domestic and Sexual Violence Hotline	NYS Office for the Prevention of Domestic Violence	(800) 942-6906 (894) 997-2121 (text)	<u>Faculty, Staff and Students</u> Support, Information and Referral Services (This is a Free service)
Sexual Assault Crisis Center of Eastern Connecticut, Inc. (SACCEC),	78 Howard Street New London, CT 06320	24 Hour Hotline: (860) 456-2789	<u>Rensselaer at Hartford Faculty, Staff and Students</u> Counseling, Support, Information and Referral Services (This is a Free service)
Connecticut Coalition against Domestic Violence (CCADV)	655 Winding Brook Dr. Suite 4050 Glastonbury, CT 06033	24 Hours Hotline: (888) 774-2900 safeconnect@ctcadv.org	<u>Rensselaer at Hartford Faculty, Staff and Students</u> Counseling, Support, Information and Referral Services (This is a Free service)
(EAP) Employee Assistance Program BHS	Online Portal: Portal.BHSONline.com Username: RPI	24 Hours Hotline (800) 327-2251	<u>Faculty, Staff and their Dependents</u> Counseling, Support, Information and Referral Services (This is a Free service)

D. Medical Assistance and Evidence Collection

An individual is encouraged to seek medical attention immediately following an incident of Sexual Misconduct, and particularly Sexual Violence, to assess and treat any injuries, screen for pregnancy (if appropriate) and sexually transmitted infections, and to properly collect and preserve evidence, if the individual consents to do so. Collecting evidence does not obligate an individual to any particular course of action but can assist the authorities should the individual decide to pursue criminal charges now or in the future. Rensselaer will assist any community member in seeking medical services.

Physical evidence of Sexual Misconduct or Sexual Violence should be collected from the individual’s person within hours of the incident, although it may be possible to obtain evidence from towels, sheets, clothes, etc. for much longer periods of time. An individual who believes they have been subject to Sexual Misconduct and particularly Sexual Violence should go to an emergency room before washing their body or changing clothing. Hospitals have personnel who are specially trained to collect evidence in such cases. They will properly collect and preserve any evidence as well as document any injuries. It is best not to change clothes. However, if clothes have been changed, the clothes worn at the time of the incident should be brought to the emergency room in a clean, sanitary container such as a paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe and may render evidence useless). Bring a change of clothing to the hospital as the clothes worn at the time of the incident will likely be kept as evidence.

Student Health Service can provide after-incident and follow-up medical care, however, it is not equipped to collect forensic evidence.

E. Other Resources

In addition to the confidential care and support resources listed above, individuals have access to a variety of other resources available through the Institute.

Office	Location	Contact Information	Service Availability
Department of Public Safety	Public Safety Building, Visitor Information Center, 15 th Street Footbridge	(518) 276-6611 Blue Emergency Phone Towers on campus	24 hours a day 7 days a week
Dean of Students Office	Academy Hall 4 th Floor, Suite 4600	(518) 276-6266	Monday – Friday 8:30 a.m. – 5:00 p.m.
Title IX Office	Division of HR Gurley Building, 2 nd Fl. 21 Union Street Troy, NY 12180	(518) 276-6302	Monday – Friday 8:30 a.m. – 5:00 p.m.
Vice Provost and Dean, Office of Graduate Education	1516 Peoples Avenue Troy, NY 12180	(518) 276-8433	Monday – Friday 8:30 a.m. – 5:00 p.m.
Vice Provost and Dean, Office of Undergraduate Education	Walker Laboratory Bldg. Suite 4010 Troy Campus	(518) 276-2244	Monday – Friday 8:30 a.m. – 5:00 p.m.
Troy Police Department	55 State Street Troy, NY 12180	(518) 270-4411	24 hours a day 7 days a week
New York Police Department (“NYPD”)	Varies on Location	Non-Emergency: 311	24 hours a day 7 days a week
Hartford Police Department	253 High Street Hartford, CT 06103	(860) 757-4000	24 hours a day 7 days a week

F. Record Retention

1. Records of investigations and hearings are typically maintained by the Institute for at least seven (7) years from the student's graduation date or if the student leaves the Institute before graduation, for seven (7) years after leaving. Shorter or longer retention may occur in some circumstances.

2. The hearing recording will be maintained as part of the Investigation Record. The Complainant and the Respondent may review the recording during normal business hours by contacting the Title IX Coordinator or may be given electronic access to the recording at the discretion of the Title IX Coordinator.

3. Participants will be given reasonable access to these records during Rensselaer's business hours.

III. **GRIEVANCE PROCEDURES AND GUIDELINES**

A. Introduction

The Grievance Procedures are applicable to both Policies identified herein. The Complaint and Investigation procedures have been adopted by Rensselaer to provide a prompt and equitable method for reporting, investigating, and resolving Reports of alleged violations of Rensselaer's Sexual Misconduct Policy and/or Rensselaer's Title IX Policy.

Rensselaer will respond to Reports of Sexual Misconduct of which it is reasonably aware, regardless of whether the Institute has "actual knowledge" of the allegations of Sexual Misconduct, and Rensselaer will endeavor at all times to respond promptly in a manner that is reasonable in light of all circumstances. Rensselaer will treat Complainants and Respondents equitably by offering Supportive Measures to both parties and by following the Grievance Procedures set forth herein before disciplinary actions are imposed.

In some instances, an identified Respondent may make allegations of policy violations by the originally identified Complainant. This is called a "cross-complaint." In the event of a cross-complaint, the Parties may be referred to as Party A and Party B instead of as "Complainant" and "Respondent" to avoid confusion; but if they retain their "Complainant" and Respondent references, the references will be based on the first complaint filed. In any event, each Party will have all of the same rights and be subject to the same procedures that apply to Complainants and Respondents.

Any reference to "days" refers to business days unless otherwise stated.

B. Grievance Process

1. All reports to Rensselaer will be investigated and resolved in a fair and impartial manner. Rensselaer will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived such privilege.

2. A Report of Sexual Misconduct can be filed with a Title IX Coordinator. All members of Student Life, Dean of Students Office and the Department of Public Safety are equipped to assist and connect the student (Complainant, Respondent or witnesses) with obtaining the emergency and support services that may be needed and/or with contacting a Title IX Coordinator to file a Report.

3. In response to the filing of a Report, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without filing a Formal Complaint, and explain to the Complainant the process for filing a Complaint or Formal Complaint.

4. Upon receipt of a Complaint or Formal Complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:

- a. Notice of the Institute's Report/Grievance Procedures, including any Informal Resolution Process.
- b. Notice of the allegations of Sexual Misconduct that potentially violate these Policies, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the applicable Policy and Procedures for the alleged conduct, the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Misconduct, the date and location of the alleged incident, if known and whether a hold will be placed on Respondent's degree pending the final adjudication of an allegation of a violation of these Policies. The written notice will also include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigatory process. The written notice will inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence, including that which is contained in the Investigation Record. The written notice will inform the parties that the Institute prohibits knowingly making false statements or knowingly submitting false information during the grievance process, as set forth in the Student Handbook, Grounds for Disciplinary Action.
- c. If, in the course of an investigation, the Institute decides to investigate allegations about the Complainant or Respondent that are not included in the notice of allegations provided, the Institute will provide notice of the additional allegations to the parties whose identities are known.

5. If a Complainant and the Title IX Coordinator choose not to file a Formal Complaint, Rensselaer will not continue any investigation of a violation of Title IX; however, Rensselaer may continue the investigation and adjudication process set forth in an applicable policy to determine if the complained-of conduct violates Institute policy or other legal standards to which the Institute is held.

6. Rensselaer seeks to complete the investigation of Complaints within a reasonable and prompt timeframe from receipt of the initial Report. All time frames expressed in the Grievance Procedures outlined herein are meant as guidelines rather than rigid requirements. Circumstances may arise that require the limited extension of time frames for good cause. Such "good cause" circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the absence or availability of the parties, Advisors or witnesses, the effect of a concurrent criminal investigation, any intervening Institute break or holiday, the need for language assistance or accommodation of disabilities, or other unforeseen circumstances. In the event that the process exceeds these time frames, Rensselaer will notify the Complainant and Respondent in writing of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

7. It is a violation of Rensselaer policy to file a knowingly false or malicious Report of alleged Sexual Misconduct; however, a Report filed in good faith under this provision shall not constitute retaliation. Action against such conduct may be pursued using the procedure set forth in the applicable policy. A knowingly false or malicious Complaint includes but is not limited to a report where the Complainant:

- a. Is aware the allegation is false;
- b. Filed the report with the intent to deceive or mislead; and/or
- c. Filed the false report with Rensselaer with the specific intent to cause harm to an individual.

8. The Respondent is presumed not to have violated the Policy until there is a final determination of a Policy violation.

C. Privacy in the Grievance Process

1. Rensselaer will maintain as confidential any Supportive Measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality will not impair Rensselaer's ability to investigate and provide the Supportive Measures. Rensselaer will further keep confidential from anyone who is not involved in the Grievance Process the identity of any individual who has made a report of Sexual Misconduct, the Complainant, the Respondent, and any witness, except as permitted by FERPA, required by law, or otherwise to carry out the purposes of Title IX and its regulations, including to conduct a Grievance Process. When a Formal Complaint is initiated by a Complainant or signed by the Title IX Coordinator with knowledge of the Complainant's identity, the Complainant's identity cannot be kept confidential from the Respondent.

2. **Privacy:** Privacy is defined as precluding the sharing of information relative to a Sexual Misconduct complaint investigation with any persons who **do not** have a legitimate interest in the investigation or resolution. Even Institute offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

3. The grievance process demands the highest level of discretion. Therefore, the Institute will advise all parties (Complainant, Respondent, Advisors, Support Persons, and witnesses) involved in an investigation or subsequent proceedings of the importance of discretion; the need to exercise integrity; and the value of respecting the privacy of those involved in the process.

D. Supportive Measures and Emergency Removals

1. **Supportive Measures:** *Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Institute's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Institute's educational environment, or deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

In response to a report of an alleged Sexual Misconduct policy violation, the Institute will

provide information to the Complainant(s) and Respondent(s) regarding supportive measures that are available to them.

2. **Emergency Removal:** The Institute will remove a Respondent from the Institute's education program or activity on an emergency basis, based upon the Institute's individualized safety and risk analysis, when it determines that an immediate threat to the physical health or safety of one or more individuals arising from the allegations of sexual harassment justifies removal. The Institute will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The process for challenging an Emergency Removal is as follows:

- a. A student may present a challenge to the Vice President of Student Life, a staff member or non-student third party may present a challenge to the Vice President of Human Resources, and a faculty member (non-tenure, tenure track, and tenured) may present a challenge to the Provost.
- b. The Respondent must present his/her challenge in writing within five Institute business days of receipt of notice of emergency removal.
- c. Rensselaer will notify the Complainant of any challenge presented by the Respondent and give the Complainant an opportunity to oppose the challenge in writing within three business days of receipt of notice of the challenge.
- d. The decision on the Respondent's appeal will be made promptly and will be communicated in writing simultaneously to the Complainant and the Respondent. The decision on the challenge is final.

E. Advisors and Emotional Support Persons

Advisors: The Complainant and Respondent may be assisted by an Advisor of their choice in any Sexual Misconduct investigation and/or grievance proceeding herein. If requested, Rensselaer will appoint a staff person trained in Rensselaer's policies and procedures as a Complainant's or Respondent's Advisor. The Advisor is present in an advisory capacity only to their respective party and may attend, but shall not participate or intervene in meetings, the investigation, or any proceeding related to the Complaint, except as set forth below with regard to questioning of witnesses at a hearing. This same standard applies in cases in which the Advisor is an attorney retained by the Complainant or Respondent. NOTE: Advisors appointed by Rensselaer may not form attorney-client relationships with Complainants or Respondents and may not provide legal advice. While Complainants' and Respondents' conversations with Advisors appointed by Rensselaer are confidential and will not be disclosed to a Title IX Coordinator, investigator, or Hearing Board without the party's consent or the existence of an immediate threat to someone's safety, those conversations are not privileged by law and may be revealed by court order in criminal or other legal proceedings (unless an Advisor is an attorney providing legal advice to the Complainant or Respondent). Individuals with concerns about this topic may wish to consult an attorney.

Emotional Support Person: The Complainant and Respondent may each have one emotional support person of their choice present with them at all meetings and any proceeding associated with a Complaint and in which the respective individual is participating. The support person must be a member of the Rensselaer community or a member of the Complainant's/Respondent's immediate family, and shall not have involvement in the underlying case.

To serve as an emotional support person, the individual may be required to meet with the Title IX Coordinator prior to participating in meetings associated with the Complaint. The support person is a silent and non-participating presence who is there solely to observe and provide emotional support. The emotional support does not assist with details and facts in the investigation.

An exception for more than one emotional support person may be granted at the sole discretion of the Institute.

NOTE: Persons who are witnesses to the matter may not act in the role of Advisors and/or Emotional Support Persons as defined in this section.

F. Statement Against Retaliation

Any attempt by any member of the Rensselaer community to penalize, intimidate, or retaliate in any way against a person who makes a Complaint of or who participates in an investigation or a hearing for alleged violations of the Sexual Misconduct policies of Rensselaer or Title IX is prohibited. Any person who believes that they have been retaliated against for making a Complaint or for cooperating in an investigation or hearing should immediately contact a Title IX Coordinator. Any person who retaliates against a person who has made a Complaint/report or who has cooperated in an investigation and/or hearing is in violation of Rensselaer policy and will be subject to disciplinary action. An allegation of retaliation will be investigated and adjudicated as an additional complaint.

G. Fair and Equitable Process

Rensselaer provides a fair and equitable process for responding to and resolving Complaints of Discrimination or Sexual Misconduct. The Institute will make reasonable efforts to ensure that both parties are treated with respect, dignity and sensitivity throughout the process, including as applicable:

1. Providing the Complainant and the Respondent access to care and support services from the Institute and from the community, as set forth in Sections II(B) and II(C), above.
2. Facilitating privacy and protection under the Family Education Rights and Privacy Act (FERPA).
3. Informing both parties of the Institute's policies and Grievance Procedures.
4. Providing both parties the opportunity to challenge the appointment of the Investigator or Hearing Panel member if a conflict of interest is demonstrated.
5. Allowing the Complainant and Respondent to choose to participate or decline to participate in the investigatory process related to a Complaint, with the understanding that the process may continue without their involvement.
6. Notifying both parties, in writing, of the Complaint resolution – including the outcome of any appeal.
7. Notifying both parties of the option to have an Advisor and a support person.
8. Understanding that information collected through an investigation and/or Grievance proceeding may be subpoenaed in a criminal and/or civil proceeding.

9. During the investigation and adjudication process, the Respondent is presumed not to have violated the Policy until there is a final determination of a Policy violation.

H. Intake Process

Upon receipt of a Report of possible Sexual Misconduct, a Title IX Coordinator will be assigned to the matter. The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures with or without filing a Formal Complaint, consider the Complainant's wishes with respect to Supportive Measures, and explain to the Complainant the process for filing a Formal Complaint.

Upon the filing of a Formal Complaint, the Title IX Coordinator will simultaneously notify both the Complainant and the Respondent of the receipt of that Formal Complaint, inform the Complainant and Respondent of the availability of Supportive Measures and explain the applicable Grievance Process and the Informal Resolution Process.

The Title IX Coordinator will determine whether the Respondent should be subject to immediate emergency removal (as defined above) or, if the Respondent is a non-student employee, whether the Respondent should be placed on administrative leave. A Respondent who is removed or placed on administrative leave may challenge that determination as follows:

1. A student may present a challenge to the Vice President of Student Life, a staff member or non-student third party may present a challenge to the Vice President of Human Resources, and a faculty member (non-tenure, tenure track, and tenured) may present a challenge to the Provost.
2. The Respondent must present his/her challenge in writing within five Institute business days of receipt of notice of emergency removal.
3. Rensselaer will notify the Complainant of any challenge presented by the Respondent and give the Complainant an opportunity to oppose the challenge in writing within three business days of receipt of notice of the challenge.
4. The decision on the Respondent's appeal will be made promptly and will be communicated in writing simultaneously to the Complainant and Respondent. The decision on the challenge is final.

If a Complainant chooses not to file a Formal Complaint, the Title IX Coordinator will determine whether it is in the Institute's or Complainant's best interest to prepare and sign a Formal Complaint, and where doing so is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator will provide notice to the parties who are known, as set forth above, of the Formal Complaint ("Notice of Complaint").

The Complainant and the Respondent must confirm receipt of the Notice of Complaint and meet with the Title IX Coordinator for informational purposes within five (5) business days of receiving this notice or, alternatively, inform the Title IX Coordinator that they have chosen not to participate in the informational meeting. Requests to postpone the informational meeting may be granted if the request is based on a compelling reason. When possible, a request for postponement occurs no less than 24 hours before the scheduled meeting and/or interview.

The Complainant and Respondent should inform the Title IX Coordinator whether they wish to participate in the investigative process within five (5) business days of their informational meeting with the Title IX Coordinator. The Complainant or Respondent may request additional time to make that decision and/or to schedule an investigative interview. However, in the event that the Title IX Coordinator finds that the Complainant or Respondent has engaged in unreasonable delay, the Title IX Coordinator may move forward with the investigation and

resolution process without that individual's participation after providing the individual with written notice and an opportunity to respond.

If the conduct alleged in a Formal Complaint would not constitute Sexual Harassment as defined under Title IX even if proved, did not occur in Rensselaer's education program or activity, or did not occur against a person in the United States, then Rensselaer will determine whether the alleged conduct would constitute a violation of Rensselaer's Sexual Misconduct Policy or other legal requirements applicable to Rensselaer.

If the conduct alleged in a Formal Complaint would not constitute Sexual Harassment as defined under Rensselaer's Sexual Misconduct or Title IX Policy, even if proved, then Rensselaer will dismiss the Formal Complaint for purposes of the instant Policies however, such dismissal does not preclude Rensselaer from continuing an investigation under Rensselaer's other policies such as the Student Handbook. In such event, Rensselaer will promptly and simultaneously notify the parties in writing of the dismissal and the reasons for the dismissal.

If a Complainant notifies the Title IX Coordinator in writing at any time during the intake, investigation or hearing process that they would like to withdraw the Formal Complaint or any allegations therein, if the Respondent is no longer enrolled or employed by Rensselaer, or if specific circumstances prevent Rensselaer from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations thereof, Rensselaer may dismiss the Formal Complaint or any allegations therein. In such event, Rensselaer will promptly and simultaneously notify the parties in writing of the dismissal and the reasons for the dismissal. Either party may appeal the dismissal through the process set forth below within 5 business days.

I. Informal Resolution Process

NOTE: Informal Resolution, including but not limited to mediation, is not an option for cases in which an employee is the Respondent and a student is the Complainant. Further, Informal Resolution is not available in cases of complaints alleging Sexual Harassment under Title IX where a Formal Complaint is not filed.

Beyond these restrictions, if it is determined to be possible and safe, the Institute may choose to recommend resolving a Formal Complaint through informal means. The Title IX Coordinator will evaluate whether the Formal Complaint is appropriate for Informal Resolution. If Informal Resolution is appropriate, the Title IX Coordinator will first speak with the Complainant about this option. If the Complainant voluntarily agrees and indicates so in writing, the Title IX Coordinator will speak with the Respondent about the possibility of an Informal Resolution. Informal Resolution will be pursued only with the written consent of both parties and the Title IX Coordinator. Rensselaer's Informal Resolution process is set forth in Appendix C hereof.

In most circumstances, when both parties consent to participate in the Informal Resolution Process, such process will proceed in lieu of a formal investigation process.

J. Investigation Process

1. If an Informal Resolution does not resolve, or is not appropriate for resolving the Formal Complaint, the Title IX Coordinator will designate an Investigator to conduct a reasonable, impartial, and prompt investigation of the Formal Complaint. The Investigator will establish a timeline and process for conducting the investigation. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility will rest upon Rensselaer and not on the parties (except that Rensselaer cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Rensselaer obtains that party's voluntary written consent to do so).

2. The Investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, and will conduct the investigation based upon the facts and circumstances reported to the Institute and developed through the course of the investigation, including interviews as feasible and appropriate with the Complainant, the Respondent, and any witnesses, and gathering other pertinent evidentiary materials to the extent reasonable and appropriate. Whenever feasible, investigative interviews will be recorded and transcribed. Rensselaer will not restrict the parties' ability to discuss the allegations under investigation or to gather and present relevant evidence.

3. The Investigator will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including evidence upon which Rensselaer does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

4. Prior to completion of the investigative report, the Title IX Coordinator or designee, will send to each party and the party's Advisor, if any, the evidence subject to inspection and review, and the parties will have ten (10) days to submit a written response, which the Title IX Coordinator will consider prior to completion of the investigative report. Rensselaer will make all such evidence subject to the parties' inspection and review available at any hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

5. Rensselaer may require that parties sign a non-disclosure agreement that will restrict review and use of the evidence to purposes related to the process under this Policy.

6. Upon completion of the investigation, the Investigator will prepare an investigative report that fairly summarizes relevant evidence. The investigative report will then be provided to each party and his/her Advisor, if any, in electronic format at least ten days prior to a hearing for their review and written response. The Title IX Coordinator is responsible for redacting information that is not relevant to the matter at hand, such as:

- Personally identifiable information about the Complainant, Respondent and witnesses;
- The past sexual history of a Complainant or Respondent with persons other than the other party in an investigation or Grievance proceeding; and/or
- The current or prior medical history of a Complainant or Respondent unless that information is relevant or has been provided by the Complainant or Respondent on their own behalf.

Notwithstanding any contrary provision herein, evidence concerning prior behavior demonstrative of a common plan, scheme, or modus operandi may be considered during the investigation and determinations made under this policy.

7. The Investigator will consider any additional allegations that may come to light during the investigation. When additional allegations arise and/or additional Policy provisions are considered, written notice of such additional allegations will be provided to the Complainant and Respondent.

8. When multiple complaints are received that arise out of the same incident or closely related facts, including cross-complaints, those complaints will generally be joined in one investigation, at the discretion of the Title IX Coordinator.

9. Rensselaer will revisit the opportunity to enter into an Informal Resolution process to resolve the Formal Complaint at the close of the investigation (within the restrictions described above). One of the Institute's Title IX Coordinators who did not investigate the Formal Complaint (or designee) will evaluate the matter to determine if Informal Resolution is appropriately considered. If the determination is to offer Informal Resolution, parties will be simultaneously informed, and the process set forth in Appendix D will be followed.

K. Hearing Board Procedures

1. The Hearing Board is charged with conducting a prompt, thorough, and unbiased live Hearing to determine, based on a **preponderance of the evidence** standard, whether or not the Respondent violated the applicable Policy. The Hearing Board is responsible for making relevancy determinations during the Hearing.

2. The Hearing Board will consider all allegations that are the subject of the Formal Complaint.

3. The Hearing Board consists of three (3) members from among:

- a. members of the Investigator pool who were not involved in the original investigation; and
- b. faculty, staff or retained personnel who have been trained to review Sexual Misconduct Complaints.

4. The Complainant and Respondent may each be granted one (1) extension of up to five (5) business days with regard to the scheduling of the hearing for legitimate reasons.

5. At the request of either party, or if the Title IX Coordinator or the Hearing Board Chair determines it is in the best interest of the Institute, Rensselaer will provide for the live Hearing to occur with the parties located in separate rooms with technology enabling the Hearing Board and parties to simultaneously see and hear the party or the witness answering questions. If Rensselaer determines a live Hearing is to be conducted remotely, Rensselaer may issue instructions and guidelines for conducting and participating in such remote Hearings. Rensselaer will create an audio or audiovisual recording, or a transcript, of any live Hearing and will make such available to the parties for inspection and review upon request when a party appeals the Hearing Board's determination.

6. At the live Hearing, the Hearing Board will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live Hearing will be conducted directly, orally, and in real time by the party's Advisor of choice but never by a party personally.

- a. Only relevant cross-examination and other questions may be asked of a party or witness.
- b. Before a Complainant, Respondent or witness answers a cross-examination question, the Board will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- c. If a party does not have an Advisor present at the live hearing and requests that Rensselaer provide him or her an Advisor at least three (3) business days prior to the live Hearing, Rensselaer will provide an Advisor of Rensselaer's choice without fee or charge to the party.
- d. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

7. The Hearing Board will submit to the Title IX Coordinator a written report of its determination regarding responsibility. The written determination will include:

- a. Identification of the allegations potentially constituting Sexual Misconduct.
- b. A description of the procedural steps taken from receipt of the Report and Formal Complaint through the determination, including any notification to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and Hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of Rensselaer's Title IX Policy, Sexual Misconduct Policy, Student Handbook, Employee Handbook, and Faculty Handbook (as applicable) to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and whether remedies designed to restore or preserve equal access to Rensselaer's education program or activity will be provided by Rensselaer to the Complainant; and
- f. Any disciplinary sanctions imposed on the Respondent after the Procedures identified in Appendix C are followed.
- g. Whether remedies designed to restore or preserve access to Rensselaer's education program or activity will be provided to the Complainant, but not the nature of those remedies.
- h. Rensselaer's procedures and permissible bases for the Complainant and Respondent to appeal.

8. The Title IX Coordinator will provide the Hearing Board's written determination to the parties simultaneously.

9. Both parties may appeal the outcome of the Hearing as outlined in Paragraph E, below.

10. The determination becomes final either on the date that Rensselaer provides the parties with the written determination of the appeal, if any (see below), or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.

L. Appeal Procedures

1. Both the Complainant and the Respondent may appeal in writing the outcome of a Hearing and from Rensselaer's dismissal of a Formal Complaint. The written Request for Appeal should be submitted to the Title IX Coordinator within five (5) business days following the date on which the notice of dismissal or the Hearing Board's written determination is delivered to the parties as applicable. The Appeal may not exceed 10 double-spaced typed pages using 12-point font and one-inch margins. The only grounds upon which either appeal may be based are:

- a. **Procedural Irregularity:** A procedural irregularity occurred that impacted the outcome of the Hearing as it applies to the appealing party (e.g. substantiated bias, material deviation from established procedures, etc.). A description of the error and its impact on the outcome of the case as it applies to the appealing party must be included in the Request for Appeal; or
- b. **New Evidence:** New evidence has arisen which was not reasonably available to the appealing party at the time the determination was made and that could have impacted the outcome of the matter. Information that was known to the appealing party at the time of the Hearing but which they chose not to present is not new information. A summary of this new evidence and its potential impact on the findings and/or sanctions must be included in the Request for Appeal, or
- c. **Conflict of Interest or Bias:** The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- d. **Sanctions:** In the event that the Hearing Board finds the Respondent violated Title IX and/or Rensselaer's Sexual Misconduct Policy, both Complainant and Respondent may appeal the sanction imposed in the Hearing Board report. Both parties will be given an opportunity to submit a statement detailing the impact of the incident or mitigating facts or circumstances they believe should be considered in imposing a greater or lesser sanction.

2. Dissatisfaction with the outcome of the proceeding is not grounds for an appeal.

3. The Title IX Coordinator will notify the non-appealing party that a Request for Appeal has been submitted. The non-appealing party will be permitted to submit a written opposition to the appeal within five (5) business days of notification of the appeal.

4. The Title IX Coordinator will consider if the Request for Appeal was submitted in a timely manner and if so, whether the Request for Appeal is properly framed based on one or more of the grounds for appeal. If the Title IX Coordinator determines that the Request for Appeal was not timely, or is not properly framed or formatted, the Request for Appeal may be denied.

5. If the Request for Appeal is submitted in a timely manner and is properly framed it will be referred to the Appeals Panel for review. The Appeals Panel will endeavor to make a final determination for the Institute within seven (7) business days and such determination will be in writing, will include the result of the appeal and the rationale for the result, and will be provided simultaneously to the Complainant and the Respondent.

6. Appeals are not intended to be a full rehearing of the Complaint (de novo). Rather, appeals are confined to a review of the written documentation supporting the Request for Appeal and the record of the original hearing. In any Request for Appeal the burden of proof lies with the party requesting the appeal, as the original determination and any sanctions are presumed to have been decided reasonably and appropriately.

- a. **Procedural Irregularity, Conflict of Interest, or Bias:** If it is determined that a procedural error occurred which was substantially prejudicial to the outcome of the hearing, the Complaint may be remanded to the original Board with instructions to reconvene to cure the error. In rare cases, where the procedural error cannot be cured by the original Board (as in cases of bias), a new hearing with a new Board may be the appropriate remedy. The results of a reconvened hearing process cannot be appealed.
- b. **New Evidence:** If it is determined that new information should be considered, the Complaint may be returned to the original Board to reconsider the Complaint in light of the new information only. In such a case, the findings of the Board based on consideration of the new information are not appealable.
- c. **Sanctions:** If it is determined that the sanction may have been too harsh or lenient considering all facts and circumstances of the incident, the Appeal Panel may return the matter to the appropriate campus leader (i.e., the Vice President of Student Life for student-respondents, the Vice President of Human Resources for employee-respondents, and the Provost for faculty-respondents) for reconsideration of the sanction(s). In that instance, the Appeal Panel should provide the campus leader with its reason(s) for returning the matter for reconsideration, and the campus leader will inform both Complainant and Respondent in writing of their decision to modify the original sanction(s) and the reason for that decision.

7. A party that obtains New Evidence beyond five (5) business days from the date on which notice of dismissal was sent may submit a Request for Appeal detailing the factual basis why such evidence was not reasonably available to the party at the time the determination was made and how such evidence would have impacted the outcome of the matter. If Rensselaer determines that such New Evidence was not reasonably available within the time to Appeal, and that such information would reasonably impact the outcome of the matter, Rensselaer may reopen an investigation. Reopening of any investigation is at the sole discretion of the Institute.

M. Special Provisions

1. The Institute reserves the right to modify or adapt these procedures as needed to allow for the fair and prompt resolution of a Complaint, such as when it is received at the end of a term or during a break in the Institute's academic schedule.

2. Absence of a Complainant:

- a. As necessary, the Institute, through its Title IX Coordinator, reserves the right to initiate a Complaint or Formal Complaint without the participation of a party allegedly subjected to Sexual Misconduct.
- b. In such cases, the Institute reserves the right to terminate the Grievance Process in circumstances in which it is able to reach a resolution with Respondent that satisfies the Institute's obligations under Title IX and other relevant discrimination laws to end the alleged conduct, prevent its recurrence, and remedy its effects on the Complainant and the Institute Community.

3. Alcohol and Drug Use Amnesty: The health and safety of every student at Rensselaer is of utmost importance. Rensselaer recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Rensselaer strongly encourages students to report Sexual Misconduct to Institute officials. A student witness (including Complainant or Respondent) acting in good faith or a reporting student acting in good faith who discloses any incident of Sexual Misconduct to Rensselaer officials or law enforcement will not be subject to the Rensselaer policies relating to alcohol and/or drug use policies occurring at or near the time of the commission of the Sexual Misconduct. However, the use of alcohol or drugs will never function as a defense for any behavior that violates the Rensselaer Sexual Misconduct Policy.

4. Past Sexual History: The past sexual history of a Complainant or Respondent with persons other than the other party in an investigation or Grievance proceeding generally will not be considered. If the party believes the past sexual history of the other party is relevant to the investigation and/or Grievance proceeding, they must submit a written request to the Title IX Coordinator not investigating the case (or designee) explaining the nature of the information and why the information is relevant to the investigation and/or Grievance proceeding. The Title IX Coordinator not investigating the case (or designee) will review the request and generally render a decision within two (2) business days or within such time as is reasonable.

5. Medical History: The current or prior medical history of a Complainant or Respondent will generally not be considered unless that information is relevant and has been provided by the Complainant or Respondent on their own behalf. The Title IX Coordinators not participating in the case as an investigator are responsible for redacting any such medical information that is beyond the scope of the investigation and/or that might violate that individual's privacy. If the party believes the medical history of the other party is relevant to the investigation and/or Grievance proceeding, they must submit a written request to the Hearing Board explaining the nature of the information and why the information is relevant to the investigation and/or Grievance proceeding. The Hearing Board will review the request and generally render a decision within two (2) business days or within such time as is reasonable.

6. Respondent's Prior Conduct History: The Investigator and/or Board may consider past findings of Sexual Misconduct, information about previous behavior and/or Complaints regarding the Respondent if the Respondent was previously found to be responsible for a similar violation at the disciplinary/sanctions stage of the process by the Hearing Board (when applicable) or Vice President for Student Life or designee when determining what sanction(s) to recommend or impose.

7. Failure to Comply with Grievance Procedures: If a party or other participant in the process (e.g., a support person) fails to comply with the procedures set forth herein, the Institute reserves the right to terminate the investigation or Grievance proceeding and/or to exclude a participant from further participation in the process. The Institute shall not terminate a process or exclude a participant from further participation without providing advance written notice and an opportunity for the affected party to respond in writing. In such circumstances, the Institute shall implement alternative resolution options as may be appropriate under the circumstances to insure that, notwithstanding any misconduct during the Grievance proceeding, that the Institute has taken reasonable steps to determine whether a violation of the Institute's Sexual Misconduct policies occurred and, if so, to take prompt and appropriate remedial actions in response to such conduct.

Appendix A –Hearing Board Process

1. Prior to the Hearing, both parties will receive formal notice including sufficient details of the allegations, including the identity of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known). The notice will also include (i) a statement that the Respondent is presumed not responsible until a determination is made at the conclusion of the process; (ii) information regarding the parties' right to an Advisor and the right to review evidence; and (iii) notice of any provision in Rensselaer's policies that prohibits knowingly making false statements or submitting false information during the Grievance Process. If additional allegations are later included within the scope of the investigation, additional Notice must be provided at that time.

2. Both parties have five (5) business days from notice that the matter is proceeding to a live Hearing, whether in person or by video, to submit a list of any proposed witnesses to the Hearing Board that they suggest be called by the Hearing Board. The witness list should include the following information regarding each proposed witness:

- The names of any witnesses that either party intends to call;
- A description of what each witness observed, if not already provided during the investigation;
- A summary of why the witness's presence is relevant to making a decision at the Hearing; and
- An explanation of why the witness was not interviewed by the investigator, if applicable.

3. The Board must be free of conflict of interest or bias against a party.

4. The Investigation Record and the Investigative Report ("Record for Hearing") will be shared with the Hearing Board for review prior to the Hearing.

5. The Hearing Board or Title IX Coordinator can decide to dismiss a Formal Complaint under the applicable policy prior to the Hearing, if the allegations would not constitute Sexual Harassment, even if proven, or it is determined Rensselaer does not have jurisdiction. Further, the Hearing Board can also decide to dismiss the Complaint or Formal Complaint if the Complainant provides written notice of their request for dismissal to the Title IX Coordinator or when specific circumstances prevent the gathering of evidence sufficient to reach a determination.

6. Prior to the Hearing, the Hearing Board will thoroughly review the Record for Hearing and any other information it determines necessary to assist it in reaching a determination. The Hearing Board has the discretion to determine the relevance of any proffered evidence and may determine that certain types of evidence should be included or excluded. From this review, the Hearing Board will identify witnesses they would like to have appear. Both parties will be notified in advance of the Hearing of any witnesses who will be invited to appear at the Hearing. All witnesses will be subject to cross-examination at the Hearing.

7. Both parties have the right to not participate in the Hearing if they so choose. In cases where the Respondent and/or Complainant have chosen not to participate in the Hearing, the Hearing will commence and the Hearing Board will hear from the party (if one exists) who has chosen to participate in the Hearing.

8. The Hearing Board will, in its discretion, accommodate requests for alternative participation options (such as by Zoom, WebEx or other video conferencing formats) for the Complainant, the Respondent, and witnesses when appropriate, provided that the Hearing takes place live, whether in person or by video. Even if not requested by either party, the Hearing Board may direct that the hearing be conducted through video conferencing.

9. The Hearing will be scheduled to allow reasonably sufficient time for the Complainant and the Respondent to prepare for the Hearing and to allow for the participation of all material witnesses, provided, however, that the Hearing will generally be scheduled to occur within ten (10) business days. That deadline may be extended only for good cause.

10. Hearings are closed. The Hearing itself will be recorded but the deliberations will not.

11. The Complainant and Respondent will be accompanied by an Advisor and may be accompanied by an emotional support person, if they choose, as outlined in Section III(E), above.

The Complainant and Respondent are entitled to an Advisor of their choice who may be, but need not be, an attorney. The party should provide advance notice of their Advisor of choice. If a party does not have an Advisor and requests that Rensselaer provide an Advisor at least three (3) business days in advance of a live Hearing, an Advisor will be provided by Rensselaer at no cost to the party. The Chair will be responsible for making relevancy determinations in deciding whether to exclude a question asked by a party's Advisor during cross-examination. The Complainant and Respondent may remain at the Hearing until the Hearing Board begins to deliberate.

12. **Hearing Outline:** The general course of the Hearing will be as follows, whenever possible:

- a. The Chair will convene the Hearing.
- b. The Complainant will be asked to make an opening statement if they choose to do so.
- c. The Respondent will be asked to make an opening statement if they choose to do so.
- d. The Complainant will respond to questions posed by members of the Hearing Board.
- e. The Respondent will respond to questions posed by members of the Hearing Board.
- f. The Chair will call any witnesses to provide information and respond to questions as the Hearing Board determines necessary.
- g. Each party's Advisor will have the opportunity to cross-examine all witnesses (including Complainant and Respondent) after the Hearing Board has asked their questions of that witness. The Chair will determine and explicitly rule on the relevance of each question posed by an Advisor prior to the party's or witness's answering the question and will provide a rationale for its determination should it exclude a cross-examination question.
- h. The Hearing Board will ask further questions of the parties as it deems appropriate.
- i. The Complainant will make a closing statement if they choose to do so.
- j. The Respondent will make a closing statement if they choose to do so.
- k. The Hearing Board will conclude the Hearing and meet in private to deliberate.

13. Questioning. Both parties have the opportunity to put forth questions of the other party and of witnesses as described above. The Chair shall determine which cross-examination questions will be answered based upon the relevancy. If a party or witness does not attend the hearing or submit to cross-examination at the Hearing, the Hearing Board may rely on any statement of that party or witness in reaching a decision of responsibility, and the Hearing Board will not draw an inference about responsibility based solely on a party or witness's absence or refusal to answer questions.

14. Hearing Board Findings: Upon completion of the Hearing, the Hearing Board will meet in private to deliberate and determine whether any policy violation(s) occurred. The Board will use the **preponderance of evidence standard of proof** to determine whether a policy violation occurred. **Preponderance of evidence means that the Board must be convinced based on the information provided that a violation of the applicable Policy was more likely to have occurred than to not have occurred in order to find the Respondent responsible for a violation.** Based on this standard, the Hearing Board may find a Respondent responsible for an alleged violation of Policy based on a majority vote. The Hearing Board may also vote by majority to dismiss the Complaint based on the same evidentiary standard. The Title IX Hearing Board will issue a written determination regarding responsibility as set forth above in Section IV(D)(7). The determination will be sent simultaneously to the parties along with information about how to file an appeal.

15. Rules of Hearing Decorum: Hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational and administrative in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party Advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a Hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.” *Id.*

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an Advisor who refuses to comply with the rules. *Id.*, at 30320. As the Department explains, the removal process “incentivizes a party to work with an Advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a Hearing and incentivizes colleges and universities to appoint Advisors who also will comply with such rules, so that hearings are conducted with respect for all participants.” *Id.*

These Rules of Decorum require that all parties, Advisors of choice, and institutional staff treat others who are engaged in the process with dignity and respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

The following Rules of Decorum are to be observed in the Hearing and applied equally to all parties and their Advisors:

- a. Questions must be conveyed in a neutral tone.
- b. Parties and Advisors will refer to other parties, witnesses, Advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.

- c. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or decision-makers.
- d. While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
- e. The Advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Chair.
- f. The Advisor may not use profanity or make irrelevant personal attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- g. The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Board or by the Advisor in cross-examination. When the Chair determines a question has been “asked and answered” or is otherwise not relevant, the Advisor must move on.
- h. Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

16. Warning and Removal Process: The Hearing Board shall have sole discretion to determine if the Rules of Decorum have been violated. The Chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Board shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Board removes a party’s Advisor, the party may select a different Advisor of their choice, or accept an Advisor provided by Rensselaer for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the Hearing, may be anticipated should an Advisor be removed. A party cannot serve as their own Advisor under any circumstances.

The Hearing Board shall document any decision to remove an Advisor in the written determination regarding responsibility.

Appendix B – The Institute’s External Reporting Obligations for Sexual Misconduct

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The “Clery Act”)

A. Statistical Reporting: The Clery Act is a federal law requiring institutions of higher education to collect and report statistics on certain crimes in an annual Security Report. Certain Institute officials have a duty to provide the Department of Public Safety information regarding crimes when they are reported to them. All personally Identifiable Information is kept confidential, but statistical information regarding Clery reportable crimes must be shared, including the date and location of the incident (but not the specific address) and information about the reported crime to allow for proper classification. This report provides the community with information about the extent and nature of campus crimes, to ensure greater community safety.

Campus Security Authorities are required to inform the Department of Public Safety of crimes reported to them. The following individuals and organizations within Rensselaer are designated as Campus Security Authorities in accordance with the guideline set forth by the Clery Act: members of the Department of Public Safety; local law enforcement, Dean of Students and Dean of Students Office professional staff; Residence Life professional staff and Residence Directors/Assistants; Rensselaer Union Administration professional staff and student activities staff; Director of Athletics, Athletic Administration and full/part- time Coaches; First Year Experience professional staff; Human Resources staff; Office of the Provost professional staff; advisors to student organizations; and any other official with significant responsibility for student and campus activities.

B. Timely Warning: Complainants should also be aware that Institute 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. A Complainant’s name and other Personally Identifying Information will not be disclosed. The reporters for timely warning purposes are exactly the same as detailed in the paragraph above.

C. Family Educational Rights and Privacy Act (FERPA)

The outcome of a campus hearing is part of the educational record of an involved Rensselaer student. Generally speaking, the educational records of students are protected from release under a federal law, FERPA (20 U.S.C. § 1232g; 34 CFR Part 99). The Institute complies with FERPA regulations regarding the privacy of student records and observes the following exceptions to FERPA as mandated by the Clery Act:

- o The Complainant(s) in a non-consensual sexual contact/intercourse incident has the right to be informed of the finding, and sanction(s) of the investigation or hearing, in writing, without condition or limitation.
- o The Complainant(s) in a Sexual Misconduct or any other gender-based offense has 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 Clery Act permits the Institute to release publicly the name, nature of the violation and the sanction(s) for any student who is found in violation of a Institute policy that is also 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 Institute will release this information to the Complainant regarding any of these offenses.

FERPA allows for the release of student records beyond the Clery exceptions listed above. Some of those situations are listed below. For a full understanding of student rights and FERPA, please see the Institute's FERPA policy <http://registrar.rpi.edu/setup.do>.

Student education records, including student conduct records, can be subpoenaed by a court of law. Information from a student's education record may be released to a third party with the student's permission. Pursuant to a signed release, third parties (including but not limited to, graduate schools, potential employers, parents of non-minors, etc.) may request information from a student's education record.

Appendix C– How Sanctions Are Determined and Examples of Sanctions

A. How Sanctions Are Determined

Prior to the imposition of a sanction, both the Complainant and the Respondent may provide a written impact statement discussing how the alleged gender-based misconduct has impacted them. The written statement must be prepared by the student and be no more than five single-spaced typed pages, using size 12-point Times New Roman font and one-inch margins. Any impact statement must be submitted to the Title IX Coordinator within three (3) business days following receipt of notice of a policy violation finding.

In most circumstances, the Vice President for Student Life, or designee, will render a sanctioning decision within five (5) business days after either the receipt of impact statements or, if no impact statements are submitted, notice of a finding of any policy violation has been sent to both the Complainant and the Respondent.

There will be no sanction notice if there is not a finding of responsibility.

In determining a sanction, the Vice President for Student Life, or a designee, will consult with the appropriate referring entity (such as (1) Title IX Coordinator, (2) the Title IX Hearing Board, (3) the Sexual Misconduct Panel; (4) the Sexual Misconduct Hearing Board) and will impose sanctions that are:

- Fair and appropriate, given the facts of the particular case;
- Adequate to promote the safety of the campus community; and
- Reflective of the seriousness of gender-based misconduct.

When a student is found responsible for any policy violation, relevant factors will be considered when imposing a sanction, including but not limited to, if applicable:

- The specific gender-based misconduct at issue (such as penetration, touching under clothing, touching over clothing, unauthorized records, etc.);
- The circumstances accompanying any lack of consent (such as force, threat, coercion, incapacitation, etc.);
- The Respondent's state of mind (intentional, knowing, bias-motivate, reckless, negligent, etc.);
- Sanctions imposed on the Respondent in other matters involving similar conduct;
- The Respondent's prior disciplinary history;
- The impact of the offense on the Complainant; and
- The safety of the University community

B. Examples of Possible Sanctions

Rensselaer may impose one or more of the following sanctions on a Respondent determined to have violated either the Title IX Policy or the Sexual Misconduct Policy:

- a. **Service Hours:** A set number of work hours the Respondent must complete. The Title IX Coordinator will determine the nature of the work to be performed. Generally, service hours are conducted on campus.
- b. **Educational Program/Project:** Programs and activities designed to help the Respondent become more aware of Institute policies and prohibited behavior in an attempt to help the Respondent understand the inappropriateness of their conduct, including, but not limited to, participation in an educational program or completion of an online program.
- c. **Referral for Counseling:** A referral for an assessment with an appropriately trained therapist and a mandate to follow any recommendations resulting from the counseling.
- d. **Loss of Privileges:** Denial of specific privilege(s) as defined by the Title IX Coordinator for a defined period of time. Privileges include, but are not limited to, participation in extra-curricular activities and events such as social events, intercollegiate athletics, intramural programs, student organizations, and student government.
- e. **Restricted Access:** Conditions which specifically dictate and limit the Respondent's presence on campus and/or participation in Institute-sponsored activities or events. The restrictions will be clearly defined and may include, but are not limited to, student housing and presence in certain buildings or locations on campus.
- f. **Removal of Offending Cause:** Requirement to remove the item which was the subject of the Complaint.
- g. **Relocation:** Requirement that the Respondent relocate to another residence hall, or off-campus, by a specified date.
- h. **Reprimand/Warning:** Written notice that the Respondent's behavior was in violation of the Institute's Sexual Misconduct Policy and that future violations will result in more severe sanctions.
- i. **Fine:** A monetary penalty assessed as appropriate to the violation.
- j. **Conduct Probation:** Formal, written notice that the Respondent's behavior is in violation of the Institute's Sexual Misconduct policy and an expectation that the Respondent exhibit good behavior for a defined period of time. Any violation during the probationary period may result in suspension from the Institute if it is determined that the nature and circumstances of the subsequent violation warrants such action.
- k. **Disciplinary Probation:** Formal and final notice compelling the Respondent to exhibit good behavior for a defined period of time. Any violation during the probationary period will generally result in suspension or expulsion from the Institute.
- l. **Dismissal or Restriction from Institute Employment.** Conditions which specifically dictate and limit the Respondent's ability to seek and obtain on-campus employment. The restrictions will be clearly defined.
- m. **Admission Revocation.** Revocation of a student's letter of admission in the case of an undergraduate student admitted to a Rensselaer graduate or professional program.

- n. **Suspension:** Separation from the Institute for a defined period of time. During the suspension period the Respondent is not permitted on campus and is not permitted to participate in any Institute- sponsored or affiliated program or activity. The terms of the suspension may include the designation of special conditions affecting eligibility for readmission or special conditions to be in effect upon readmission
- o. **Expulsion:** Permanent separation from the Institute without possibility of re-admission. A Respondent who has been expelled is not permitted on campus and is not permitted to participate in any Institute- sponsored or affiliated program or activity.
- p. **Revocation or Limitation of Alumni Privileges.** Denial of specific privilege(s) as defined by the Title IX Coordinator for a defined period of time.
- q. **Revocation of Degree.** Upon approval of the President of the Institute, a graduate's degree or degrees may revoked and the graduate will be requested to return their diploma or diplomas. As necessary, the graduate's official transcript and other relevant Rensselaer document will be corrected to reflect this action. In addition, the dissertation (master's/senior thesis) will be removed from the Institute's Library and other scholarly repositories.

Appendix D – Informal Resolution Process

1. Depending on the applicable allegations, after a Complaint or Formal Complaint of Sexual Misconduct has been filed, the parties can choose to resolve the matter through Rensselaer’s Informal Resolution Process. The Informal Resolution Process is a dispute resolution option for Complainants and Respondents designed to provide the parties with a swift resolution to a Complaint or Formal Complaint of Sexual Misconduct, without the need for a formal process.

2. In order to submit to the Informal Resolution Process, both parties must provide written, voluntary consent to the Process and Rensselaer must determine that the process is appropriate for resolving the dispute at issue. Rensselaer will not require that the parties submit to the Informal Resolution Process, and participation in the Process is completely voluntary for all parties.

3. Information learned during any Informal Resolution Process will not be considered in any investigation or hearing. There will be no reference to Informal Resolution, or any information learned during the Informal Resolution Process in any Investigative Report if the Informal Resolution Process is unsuccessful.

4. If the allegations would be adjudicated pursuant to Rensselaer’s Title IX Policy, the parties cannot submit to the Informal Resolution Process if the Formal Complaint involves a student as the Complainant and an employee as the Respondent.

5. **Written Notice.** Once the parties decide to submit to the Informal Resolution Process, the Title IX Coordinator will provide the parties with written notice, including:

- a. The allegations;
- b. The requirements of the informal resolution process, including the right to resume the applicable formal Grievance Process; and
- c. Any consequences resulting from participating in the Informal Resolution Process.

6. **Time Frame.** Whenever possible, Rensselaer will submit a Complaint or Formal Complaint to the Informal Resolution Process within thirty (30) days from receipt. All time frames outlined in this Policy are meant as guidelines rather than rigid requirements.

7. The Informal Resolution Process is designed to enable the parties to come to a mutual agreement concerning the resolution of a Complaint or Formal Complaint without engaging in the formal Grievance Process. The parties are entitled to an Advisor throughout the Informal Resolution Process.

8. **Informal Resolution Facilitators.** The Title IX Coordinator or designee will act as Informal Resolution Facilitator during the Informal Resolution Process. In that role, the Facilitator assists the parties with navigating the Informal Resolution Process.

9. **Withdrawal.** The parties do not waive their right to a formal Grievance Process. At any time before signing the Informal Resolution Agreement, either party may choose to withdraw from the Informal Resolution Process and resume the formal Grievance Process. The party must provide their intention to do so in writing to the Informal Resolution Facilitator.

10. **Informal Resolution Agreement.** The Informal Resolution Process is completed when the parties and the Title IX Coordinator sign the Informal Resolution Agreement. The Informal Resolution Agreement is treated as a contract, which the parties are free to negotiate. Once signed, the terms of the Informal Resolution Agreement are binding on the parties.

11. **Privacy.** The terms and conditions of any Informal Resolution Process should be treated as private to promote mutually beneficial resolutions between the parties and to encourage Complainants to report any complaints of misconduct under the Policies.

12. **Outcomes.** The Informal Resolution Process may result in any measures designed to ensure the parties' access to Rensselaer's programs as well as any outcome available during the formal Grievance Process, such as the examples of sanctions identified in Appendix C including disciplinary measures up to and including removal of the Respondent from Rensselaer.

13. **Violation of Informal Resolution Agreement.** If a party has reason to believe that an agreed upon term in the Informal Resolution Agreement has been violated, they should immediately notify the Title IX Coordinator. In most circumstances, an alleged violation of an Informal Resolution Agreement will be referred to the Dean of Students for adjudication of the alleged violation pursuant to the applicable policy. If an alleged violation of the Informal Resolution Agreement, when deemed true, would constitute a potential violation of Rensselaer's Title IX Policy or Rensselaer's Student Sexual Misconduct Policy, such alleged conduct may be investigated as a new Complaint or Formal Complaint as appropriate.