UA Community College
MORRILTON

TITLE IX POLICY FOR COMPLAINTS OF SEXUAL ASSAULT AND OTHER FORMS OF SEXUAL HARASSMENT

NOTICE OF NONDISCRIMINATION UNDER TITLE IX

The University of Arkansas Community College at Morrilton does not discriminate on the basis of sex in the education programs and activities that it operates and is prohibited from doing so by Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq*., and the U.S. Department of Education's implementing regulations, 34 CFR Part 106. The College's nondiscrimination policy extends to admission, employment, and other programs and activities. Inquiries regarding the application of Title IX and 34 C.F.R. Part 106 may be sent to the College's Title IX Coordinator, the U.S. Department of Education Assistant Secretary for Civil Rights, or both.

JURISDICTION AND SCOPE

Sexual harassment as defined in this policy (including sexual assault) is a form of sex discrimination and is prohibited. Title IX requires the College to promptly and reasonably respond to sexual harassment in the College's education programs and activities, provided that the harassment was perpetrated against a person in the United States. At the time that a formal complaint is filed, the complainant must be participating in (or attempting to participate in) an education program or activity of the College. An education program or activity includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

This policy applies to allegations and complaints of sexual harassment as defined herein. All other complaints of discrimination or misconduct that do not fall within the jurisdiction of Title IX may be made through other campus procedures.

This policy shall not be construed or applied to restrict academic freedom at the College. Further, it shall not be construed to restrict any rights protected under the First Amendment, the Due Process Clause, or any other constitutional provisions. This policy also does not limit an employee's rights under Title VII of the Civil Rights Act.

REPORTING

All complaints or reports about sex discrimination (including sexual harassment) should be submitted to the Title IX Coordinator:

Mr. Darren Jones, Vice Chancellor for Student Services
Title IX Coordinator
University of Arkansas Community College at Morrilton
1537 University Blvd., Morrilton, AR 72110 (501) 977-2191
jones@uaccm.edu

Complaints may also be made to the Deputy Title IX Coordinators:

Ms. Mary Mayes, Director of Human Resources
Deputy Title IX Coordinator
University of Arkansas Community College at Morrilton
1537 University Blvd., Morrilton, AR 72110
(501) 977-2016
mmayes@uaccm.edu

Ms. Shelby Beck, Human Resources Analyst
Deputy Title IX Coordinator
University of Arkansas Community College at Morrilton
1537 University Blvd., Morrilton, AR 72110 (501) 208-5309
sbeck@uaccm.edu

In addition, the U.S. Department of Education, Office of Civil Rights, may be contacted by phone at 800421-3481 or by email at ocr@ed.gov.

Any person may report sex discrimination, including sexual harassment (whether or not the person is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

AMNESTY

The College encourages reporting of incidents of prohibited conduct and seeks to remove any barriers to reporting. The College recognizes that an individual who has been drinking or using drugs at the time of an incident may be hesitant to make a report because of potential consequences for their own conduct. Individuals who report prohibited conduct or participate as witnesses will not be subject to disciplinary sanctions for personal consumption of alcohol and/or other substances.

The College may initiate an educational discussion with individuals about their alcohol and/or drug use or may direct these individuals to services such as counseling for alcohol and/or drug use. Amnesty will not be extended for any violations of College policy other than alcohol/drug use. The use of alcohol,

drugs, and/or legally prescribed medication does not justify or excuse behavior that constitutes prohibited conduct under this policy.

FILING REPORT WITH LOCAL LAW ENROCEMENT

In some instances, sexual harassment may constitute both a violation of this policy and criminal activity. The College grievance process is not a substitute for instituting legal action. **The College encourages individuals to report alleged sexual misconduct promptly to campus officials AND to law enforcement authorities, where appropriate**. Individuals may file a report directly with local law enforcement agencies by dialing 911. Individuals may also contact any of the following for assistance in filing a report with local law enforcement:

UACCM Department of Public Safety
1537 University Blvd., Morrilton, AR 72110
501-208-7377

Morrilton Police Department
119 N. Division St., Morrilton, AR 72110
501-354-0131

PRESERVING EVIDENCE

It is important that evidence of sexual assault be preserved, because it may be needed for prosecuting a criminal case. Victims and others should not alter the scene of an attack. The victim should not change clothes, bathe or shower, drink or eat anything, or brush his or her teeth before reporting the assault. Any items worn by the victim during the assault, but are not currently being worn, and any materials encountered during the assault (*i.e.*, bed sheets, blankets, etc.) should be placed in a paper bag and brought along with the victim to a local hospital emergency department that has kits to collect and preserve evidence of sexual assault.

EMPLOYEES' DUTY TO REPORT TO TITLE IX COORDINATOR

In order to enable the College to respond effectively and to proactively stop instances of sexual harassment, employees must, within 24 hours of receiving information regarding a potential violation of this policy, report information to the Title IX Coordinator. Any employee who fails to promptly report a matter to the Title IX Coordinator may be subjected to disciplinary action for failing to do so. There are two categories of employees who are exempt from this requirement: (1) licensed health-care professionals and other employees who are statutorily prohibited from reporting such information and (2) persons designated by the campus as victim advocates.

OFF-CAMPUS CONDUCT

Conduct that occurs off campus that is the subject of a formal complaint or report will be evaluated to determine whether the matter falls within the College's jurisdiction under Title IX or should be referred to a different department or official within the College.

CONFIDENTIALITY

Except as compelled by law or as required to conduct a full and fair grievance proceeding in response to a formal complaint, the College will treat the information obtained or produced as part of the Title IX procedures as confidential. The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetuator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 CFR Part 99, or as required by law, or to carry out the purposes of 34 CFR Part 106, including the conduct of any investigation, hearing, or judicial proceedings arising thereunder.

AVAILABILITY OF COUNSELING AND ADVOCACY

Counseling and other mental health services for victims of sexual assault are available on campus and in the community. Students may use the UACCM Office of Student Development. Employees of the College may be able to seek help through community mental health agencies, such as Counseling Associates, Inc. and counselors and psychotherapists in private practice in the area can provide individual and group therapy. The Arkansas Coalition Against Sexual Assault (ACASA) may assist students or employees who have been a victim of sexual assault with finding a crisis center and/or advocating for sexual assault victims' rights and services.

EDUCATION AND AWARENESS PROGRAMS

The College's Title IX Coordinators are responsible for planning and coordinating campus education and awareness programs about all forms of sexual assault, including rape, acquaintance rape, domestic violence, dating violence, and other sex offenses. UACCM has also partnered with EverFi for online sexual assault prevention training that addresses, relationship violence, and stalking. Training is offered to students on an annual basis. Employees are required to complete training upon initial hire and again every three years. Failure to complete this annual training may result in disciplinary action.

GRIEVANCE PROCEDURE

These procedures apply to all grievances regarding conduct that may constitute sexual harassment as defined in this policy (including sexual assault) and that falls within the College's Title IX jurisdiction. All other grievances by students, employees, or third parties shall be addressed through other procedures. The College's Title IX grievance process includes formal and informal procedures that encourage prompt resolution of complaints. In most cases, the complainant's submission of a formal, written complaint to the Title IX Coordinator will initiate the formal grievance process. However, the Title IX Coordinator may also submit a formal complaint under the circumstances described below. The College will respond promptly to all formal complaints of sexual harassment.

BASIC REQUIREMENTS

The College's grievance process shall adhere to the following principles:

- All relevant evidence—including both inculpatory and exculpatory evidence—will be evaluated.

- Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- The Title IX Coordinator, investigator, hearing officers or panel members, decision-makers on appeal, persons involved with the informal resolution, and any other persons that play a significant role in the Title IX grievance process shall not have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent.
- The respondent is presumed to not be responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process.
- The time frames for concluding the grievance process shall be reasonably prompt, as set forth in more detail in the procedures below.
- The grievance process may be temporarily delayed, and limited extensions of time frames may be granted, for good cause. In such instances, written notice to the complainant and the respondent of the delay or extension and the reasons for the action will be provided. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurring law enforcement activity; or the need for language assistance or accommodations of disabilities.
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege will not be required, allowed, relied upon, or otherwise used. The College shall not 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 the capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that person's voluntary, written consent to do so for a grievance under this section.
- No party shall be restricted from discussing the allegations under investigation or to gather and present relevant evidence.
- A party whose participation in a hearing, investigative interview, or other meeting shall be provided with a written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

INITIAL REPORT/INTAKE PROCESS

INITIAL MEETING WITH COMPLAINANT

Promptly upon receiving a report of conduct that could potentially be a violation of Title IX, the Title IX Coordinator (or designee) will contact the complainant to schedule an initial meeting to, as applicable:

- Provide a copy of this policy and a copy of Arkansas Student Due Process Protection Act, codified at Ark. Code Ann § 6-60-1401 et seq.
- Explain the process for filing a formal complaint and provide a copy of the Sexual Harassment Complaint Form on which the complainant may, if he or she agrees to disclose the information, provide details regarding the allegation, including the name of the accused individual and the date, location, and general nature of the alleged violation of policy
- Explain avenues for resolution, including informal and formal
- Explain the steps involved in an investigation and hearing under this policy
- Discuss confidentiality standards and concerns
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate
- Discuss, as appropriate, possible supportive measures, which are available with or without the filing of a formal complaint

If the complainant requests that no further action be taken and/or that no formal complaint be pursued, the Title IX Coordinator (and/or his or her designee) will inform the complainant that retaliation is prohibited and that honoring the complainant's request may limit the College's ability to fully respond to the incident. In the event the complainant stands firm on his or her request that no further action be taken, the Title IX Coordinator will evaluate whether to file a complaint under the criteria set forth below.

FORMAL COMPLAINT PROCESS

FORM AND FILING OF COMPLAINT

The filing of a formal, written complaint initiates the formal grievance process and is available to any person who is participating in (or attempting to participate in) a College educational program or activity. The Title IX Coordinator (or an investigator designated by the Title IX Coordinator) will investigate the allegations in the formal complaint. Formal complaints can be filed in several ways. The complainant may utilize the form provided or may submit the complainant's own document that contains the complainant's signature (either physical or digital) and is filed with the College's Title IX Office by U.S. mail, in person, or by email. The formal complaint should set forth the allegations and request that the Title IX Office investigate the matter.

FILING BY TITLE IX COORDINATOR

The Title IX Coordinator may initiate the grievance process, even where the complainant declines to file a formal complaint, if the Coordinator determines that the particular circumstances require the College to formally respond to and address the allegations. Circumstances to be considered include, among others, a pattern of alleged misconduct by a respondent and whether the complaint has alleged use of violence, weapons, or other similar conduct. The Title IX Coordinator will also consider the complainant's wishes with respect to supportive measures and desired response by the College. Where a report is made anonymously and the Title IX Coordinator files the complaint, both the complainant and respondent will receive notice of the allegations with written details and identities of the parties if known.

CONSOLIDATION OF FORMAL COMPLAINTS

The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

DISMISSAL OF COMPLAINT PRIOR TO RESOLUTION

A formal complaint must be dismissed by the Title IX Coordinator if the alleged conduct (1) does not constitute sexual harassment, as defined in this policy, even if proved; (2) did not occur in the College's education program or activity; or (3) did not occur against a person in the United States. In addition, a complaint may be dismissed if, at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the gathering of evidence sufficient to reach a determination as to the formal complaint or any allegations therein.

Upon dismissal of a formal complaint, for any reason, the Title IX Coordinator will send simultaneous, written notice of and reason(s) for the dismissal to the parties. The dismissal decision may be appealed pursuant to the procedure for appeals set forth in this policy. Dismissal of a complaint under this Title IX

policy does not preclude a complainant from pursuing a grievance through other appropriate campus procedures.

NOTICE OF FORMAL COMPLAINT

Upon receipt of the formal complaint, the Title IX Coordinator will send simultaneous notifications of the filing of the complaint to the complainant and the respondent (if known). If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known. The initial notice will contain the following:

- The allegations of the complaint that potentially constitute sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview (including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known)
- A copy of the Title IX policy
- 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 grievance process
- A statement informing the parties that a party may seek representation by an attorney. Additionally, a statement that the parties have a right to have one advisor of their choice to assist them throughout the proceedings who may be (but is not required to be) an attorney.
- A statement that the parties have the right to inspect and review all evidence collected during the complaint process
- A statement that any party who knowingly makes false statements or submits false information during the grievance process will be subject to disciplinary procedures

INITIAL MEETING WITH RESPONDENT

If a formal complaint is filed, the Title IX Coordinator will promptly schedule an initial meeting with the respondent after the written notice of the formal complaint is sent as described above. Prior to the initial meeting, the Title IX Coordinator shall provide a written notice of the date, time, location, participants, and purpose of the meeting, with sufficient time for the party to prepare to participate. During the initial meeting with the respondent, the Title IX Coordinator (or designee) will, as applicable:

- Provide a copy of this policy and a copy of Arkansas Student Due Process Protection Act, codified at Ark. Code Ann § 6-60-1401 et seq. (if not previously provided)
- Explain avenues for resolution, including informal and formal
- Explain the steps involved in an investigation and hearing under this policy.
- Discuss confidentiality standards and concerns
- Discuss non-retaliation requirements
- Inform of any supportive measures already determined and being provided to the complainant that would directly affect the respondent
- Refer to law enforcement, counseling, medical, academic or other resources, as appropriate
- Discuss, as appropriate, possible supportive measures that can be provided to the respondent
- At least 24 hours before a student may be questioned regarding the events giving rise to the complaint, the student must be notified of the student's rights under the Arkansas Student Due Process and Protection Act.

RIGHT TO ADVISOR

The College shall advise the parties that they may seek representation by an attorney. Additionally, both parties will be advised that they may be accompanied by one advisor/support person to assist them throughout the Title IX process, which can be (but is not required to be) an attorney. The advisor is not allowed to speak or otherwise actively participate during the pre-hearing interviews or meetings. It is the party's responsibility to obtain the services of an advisor, except that the College will make an advisor available to the parties during the hearing to determine responsibility upon request. A party who wants the College to provide an advisor for the determination hearing should make a request within 15 days after the party's filing or receipt of the formal complaint. The advisor's role at the hearing is further explained below.

EMERGENCY REMOVAL

If, after the Behavioral Intervention Team undertakes a safety and risk analysis, the College determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, it may remove the respondent from the College's programs or activities. In such instances, the respondent will be provided with a written notice of the reasons for the removal. Within 5 days of receiving the notice, the respondent may challenge the decision by requesting a meeting with the Vice Chancellor for Student Services (student) or Director of Human Resources (employee).

ADMINISTRATIVE LEAVE

Nothing in this policy precludes the College from placing a non-student employee respondent on administrative leave during the pendency of the grievance process.

SUPPORTIVE MEASURES

Supportive measures, as defined in this policy, will be based on the facts and circumstances of each situation. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. They may include, but are not limited to, the following:

- 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 working or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus

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

INFORMAL RESOLUTION

At any time after a formal written complaint is filed but prior to reaching a determination regarding responsibility, the College may facilitate a resolution without a full investigation and adjudication. The complainant and respondent must give their voluntary, written consent to the informal resolution process. The informal resolution process will not be utilized to resolve allegations that an employee sexually harassed a student.

Prior to commencing the informal resolution process, the Title IX Coordinator or designee must provide the parties a written notice that includes the following information:

- Notice of the allegations contained in the formal complaint, including dates, location(s), and identities of the parties
- Any agreed upon resolution reached at the conclusion of the informal complaint process will preclude the parties from resuming a formal complaint arising from the same allegations
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

COMPREHENSIVE INVESTIGATION

If resolution of the allegations does not proceed through the informal process, the matter will proceed with a comprehensive investigation and resolution through the formal complaint processes. The Title IX Coordinator will be responsible for overseeing the prompt, equitable, and impartial investigation during the formal complaint process. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility shall rest on the College and not the parties.

ASSIGNMENT OF INVESTIGATOR

If the Title IX Coordinator's designee is to conduct the investigation, the Title IX Coordinator will forward the complaint to the investigator and share the investigator's name and contact information with the complainant and the respondent.

CONFLICTS OF INTEREST AND BIAS

Immediately after the identity of the person who will conduct the investigation is determined and communicated to the parties, the investigator, the complainant, or the respondent may identify to the Title IX Coordinator in writing any real or perceived conflicts of interest or bias that the person charged with conducting the investigation (including the Title IX coordinator, where applicable) may have. The Title IX Coordinator will carefully consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest or bias exists.

OVERVIEW OF INVESTIGATION

Upon receipt of the formal complaint, the Title IX Coordinator/Investigator (hereinafter "Investigator") will promptly begin the investigation, which shall include but is not limited to the following:

- Conducting interviews with the complainant, the respondent, and any witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form
- Visiting, inspecting, and taking photographs at relevant sites
- Where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal reports, this step may be coordinated with law enforcement agencies)
- Obtaining any relevant medical records pertaining to treatment of the complainant, provided that the complainant has voluntarily authorized release of the records in writing to the investigator

INSPECTION AND ACCESS TO EVIDENCE

The parties may identify to the Investigator any evidence or witnesses they wish to be included as part of the investigation. Both parties will also have equal opportunity to inspect and review any evidence obtained during the investigation. The Investigator will complete the gathering of evidence as soon as

practicable, which will ordinarily occur within approximately 30 days after the filing of the formal complaint.

After the gathering of evidence has been completed but prior to completion of the investigative report, the Investigator will provide to each party and party's advisor, if any, any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or 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.

The evidence will be provided in an electronic format or a hard copy. The parties will have 10 calendar days to submit a written response to the evidence, which will be considered by the Investigator prior to completion of the investigative report. The evidence will be made available for the parties to use at the hearing to determine responsibility.

INVESTIGATIVE REPORT

The investigative report shall fairly summarize the relevant evidence and must include the following items and information that is relevant to the allegations in the formal complaint:

- The dates of the Title IX Coordinator's initial receipt of a report of alleged sexual harassment against the complainant, intake meeting, and the filing of the formal complaint
- A statement of the allegation(s), a description of the incident(s), the date(s) and time(s) (if known), and location of the alleged incident(s)
- The names of all known witnesses to the alleged incident(s)
- The dates that the complainant, respondent, and other witnesses were interviewed, along with summaries of the interviews
- Descriptions or summaries of any physical or documentary evidence that was obtained (*e.g.*, text messages, emails, surveillance video footage, photographs)
- Any written statements of the complainant, respondent, or other witnesses
- The response of College personnel and, if applicable, College-level officials, including any supportive measures taken with respect to the complainant and respondent

The Investigator shall provide a draft of the investigative report to the Title IX Coordinator for review before the report becomes final. An electronic or hard-copy version of the final investigative report will be provided to each party (and each party's advisor) concurrently. The investigative report shall be provided as soon as practicable after the parties have submitted their written responses to the evidence (if any) and at least 10 calendar days prior to the determination hearing. The parties may provide a written response to the investigative report within 5 calendar days after receiving it.

DETERMINATION HEARING

Following the conclusion and distribution of the investigative report, a hearing will be conducted to determine the outcome and resolution of the complaint. The parties and their advisors, if any, will be notified by the Hearing Officer or Title IX Coordinator of the date, time and location of the hearing, as set forth in the notice provisions below.

HEARING OFFICER

Within 3 days of the release of the investigative report to the parties, the Chancellor or his/her designee will appoint (1) a single Hearing Officer, who may be (but is not required to be) an outside person not permanently employed by the College. The Title IX Coordinator will provide a copy of the formal

complaint and the investigative report, along with the parties' written responses to the investigative report, to the Hearing Officer**.**

Promptly after the appointment of the Hearing Officer, the Title IX Coordinator will provide concurrent written notice to the complainant and the respondent, setting forth the names of the individual selected to serve as the Hearing Officer. The parties may challenge the participation of any decision-maker based on bias or a conflict of interest by submitting a written objection to the Chancellor or his/her designee within 3 calendar days of receipt of the notice. Any objection must state the specific reason(s) for the objection. The Chancellor or his/her designee will evaluate the objection and determine whether to select a new Hearing Officer. Failure to submit a timely and proper objection will constitute a waiver of the objection. Any changes in the Hearing Officer will be provided in writing to both parties prior to the date of the hearing.

SUBMISSION OF WITNESSES LISTS

Within 5 calendar days of receipt of the notice of the Hearing Officer, both parties may provide to the Hearing Officer a list of witnesses, if any, that they propose be called to testify and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute. Absent good cause, a party cannot include a witness on the party's pre-hearing witness list unless the witness was identified during the investigation. The Hearing Officer reserves the right to call relevant witnesses who may not have been included on a party's witness list.

NOTICE OF THE HEARING

Not less than 5 days but not more than 10 days after delivery of the notice of the Hearing Officer's identity, the Hearing Officer will provide a separate notice to the complainant, respondent, and any other witnesses whose testimony the Hearing Officer deems relevant, requesting such individuals to appear at the hearing to determine responsibility. The notice should set forth the date, time, and location for the individual's requested presence. The Hearing Officer shall provide, in its notice to the parties, the names of the witnesses that the Hearing Officer plans to call. The hearing shall be conducted promptly but no sooner than 10 calendar days after release of the investigative report.

FAILURE TO APPEAR

If any party fails to appear at the hearing if requested to do so, and such party was provided notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Officer will proceed to determine the resolution of the complaint. As explained below, a party's failure to appear may impact the Hearing Officer's consideration and weight given to the non-appearing party's version of events based on another source, such as the formal complaint or a prior statement.

OPTION FOR VIRTUAL OR SEPARATE PRESENCE

Live hearings may be conducted with either all parties present in the same geographic location or, at the College's discretion, any or all parties and witnesses may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may request not to be in the same room as the other party. If any party makes such a request, then both parties will be required to attend the hearing from a location or room different from where the Hearing Officer is sitting. If the hearing is virtual, or there is a request for separate rooms at a physical location, the College will ensure that all participants are able to simultaneously see and hear the party or witness answering questions. Instructions will be provided for accessibility prior to the hearing date.

RECORDINGS

An audio or audio-visual recording will be created of the live hearing and will be made available for inspection and review at any party's request.

ADVISOR'S ROLE AT HEARING

The complainant and respondent may be accompanied by an advisor during the hearing to determine responsibility. A party must identify his or her advisor (if any) at least 5 days prior to the hearing. The advisor's role at the hearing shall consist of (1) providing private advice to the party he/she is supporting and (2) questioning the opposing party and other witnesses. The advisor can be anyone, including an attorney. A party may arrange for the party's advisor of choice to attend the hearing at the party's own expense. Alternatively, the College will select and provide an advisor to assist a party at the hearing to determine responsibility, without fee or charge, upon request. In either scenario, the advisor may only participate in the hearing to the extent allowed under this policy. A party who wants an advisor to be provided by the College should notify the Title IX Coordinator at least 15 days after the filing or receipt of the formal complaint.

EVIDENTIARY MATTERS AND PROCEDURE

The parties, through their advisors, shall have an equal opportunity to question the opposing party and other witnesses, including fact and expert witnesses, and present other inculpatory or exculpatory evidence. Formal rules of evidence will not be observed during the hearing. The Hearing Officer will conduct the initial questioning of witnesses prior to the questioning by an advisor. The Hearing Officer will make all determinations regarding the order of witnesses, relevancy of questions, and the evidence to be considered or excluded during the hearing and decision-making process. The Hearing Officer may, in its discretion, choose to call the Investigator for the purpose of providing an overview of the investigation and findings.

WITNESS EXAMINATIONS BY THE PARTIES

Each party's advisor is permitted to question the opposing party and the other witnesses, so long as the questions are relevant and not duplicative of the questions posed by the Hearing Officer. The questions may include challenges to credibility. No other questioning or speaking participation by an advisor will be allowed. A party may not examine a party or witness directly; rather, a party must utilize the services of an advisor for the purpose of posing questions to another party or witness. A party not represented by an advisor may, however, submit a list of proposed questions to the Hearing Officer and ask that the questions be posed to the opposing party or witness.

The decision-maker(s) cannot draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. In a circumstance where a party or witness does not participate in a hearing, the panel should weigh the facts and circumstances in determining whether to consider, and what weight to assign, any statements furnished outside the hearing process.

The Hearing Officer will make determinations regarding relevancy of questions before a party or witness answers. If a determination is made to exclude the question based on relevancy, the Hearing Officer will provide an explanation of why the question was deemed irrelevant and excluded.

The Hearing Officer may disallow the attendance of any advisor if, in the discretion of the Hearing Officer, such person's presence becomes disruptive or obstructive to the hearing or otherwise warrants removal. Advisors will be not be permitted to badger or question the opposing party or any witness in an abusive or threatening manner. Absent accommodation for a disability, the parties may not be accompanied by any other individual during the hearing process except as set forth in this policy. College officials may seek advice from the College's Office of General Counsel on questions of law, policy, and procedure at any time during the process.

PRIOR SEXUAL CONDUCT

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

CONFIDENTIALITY AND DISCLOSURE

To comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the grievance process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the formal complaint, investigative report, evidentiary materials, notices, and prehearing submissions), recordings of the hearing, and documents, testimony, or other information used at the hearing may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law.

DECISION OF THE HEARING OFFICER AND STANDARD OF EVIDENCE

Following the conclusion of the hearing, the Hearing Officer will confer and determine whether the evidence establishes that it is more likely than not that the respondent committed a violation of this policy. In other words, the standard of proof will be the preponderance of the evidence. This standard applies to complaints against both students and employees. In reaching the determination, the Hearing Officer will objectively and thoroughly evaluate all relevant evidence, both inculpatory and exculpatory, and reach an independent decision, without deference to the investigative report.

WRITTEN DETERMINATION OF RESPONSIBILITY

As soon as practicable following the hearing (and ordinarily within 10 days thereafter), the Hearing Officer shall complete a report of the decision-maker's findings. The Hearing Officer will send simultaneous notification of the decision to both parties and their advisors, where applicable, with the following information:

- Identification of the allegations potentially constituting sexual harassment under the policy
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and the hearing held
- Findings of fact that support the determination
- Conclusions regarding the application of the College's conduct standards to the facts
- A statement and rationale for the result as to each allegation, including a determination as to responsibility using the preponderance of the evidence standard
- Any disciplinary sanctions imposed on respondent
- Whether any remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant (description of remedies is not included)
- Procedures and permissible bases for the parties to appeal

SANCTIONS

If the Hearing Officer determines that more likely than not the respondent committed a violation of this policy, then the Hearing Officer will determine sanctions and consider whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. Sanctions for a finding of responsibility will depend upon the

nature and gravity of the misconduct, any record of prior discipline for a violation of this policy, or both. The range of potential sanctions is set forth in the definitions section of this policy.

Ordinarily, sanctions will not be imposed until the resolution of any timely appeal under this policy. However, if it is deemed necessary to protect the welfare of the victim or the College community, the Hearing Officer may recommend to the decision-maker on appeal that any sanctions be imposed immediately and continue in effect until such time as the appeal process is exhausted.

REMEDIES

Where a determination is made that the respondent was responsible for sexual harassment, the Hearing Officer will determine any final remedies to be provided to the complainant, if any, and the Title IX Coordinator will communicate such decision to the complainant and the respondent to the extent that it affects him/her. Remedies must be provided in all instances in which a determination of responsibility for sexual harassment has been made against the respondent. Remedies must be designed to restore or preserve equal access to the College's education program or activity. Such remedies may include the same individualized services described above as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

NO RETALIATION

The Title IX Coordinator will take steps to prevent any harassment of or retaliation against the complainant, the respondent, or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, and providing training for the campus community.

APPEALS

PROCEDURE FOR APPEALS

Both the complainant and the respondent may appeal from (1) the Title IX Coordinator's dismissal of a formal complaint or any allegations therein or (2) the Hearing Officer's determination. The appeal should be submitted in writing to the Title IX Coordinator within 5 days of receipt of the Hearing Officer's decision. The Title IX Coordinator will forward the appeal to the Chancellor. The appeal will be decided based on the written record and without deference to the decision of the Hearing Officer.

If the respondent is an employee, the Chancellor or his/her designee will decide the appeal. If the respondent is a student, the appeal will be decided by the Chancellor or his/her designee. The Chancellor or designee (in other cases) shall make any decisions concerning appellate jurisdiction under the permissible grounds for appeal described below.

The party appealing may use the Appeal Form or the party may submit his/her own written and signed document. Acceptable means of notification include email, facsimile, hand-delivered notification, or postal delivery. The Title IX Coordinator will promptly inform the other party of the appeal.

GROUNDS FOR APPEAL

The appeal from the decision of the Hearing Officer must be for one of the following reasons: (1) a procedural irregularity that affected the outcome of the decision; (2) there is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; or (3) the Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against complainants or respondents in general or against an individual complainant or respondent that affected the outcome.

RESPONSES

Within 5 days of receipt of the appeal, the other party may submit a written statement in response to the appeal and which supports or challenges the dismissal or determination. The response should be submitted to the Title IX Coordinator, who shall provide a copy to the decision-maker and the appealing party.

DECISION ON APPEAL

As soon as practicable after receiving the parties' written submissions (and ordinarily within approximately 10 days), the Chancellor (or designee) will issue a written decision describing the result of the appeal and the rationale for the result. The decision on appeal may uphold the decision, modify it, or remand for further factual development. The decision-maker on appeal will concurrently notify the complainant and the respondent of the decision, with a written copy provided to the Title IX Coordinator.

EMPLOYEES

All non-tenure track faculty and staff members of the College without term contracts are at-will employees who may be terminated at any time, with or without cause. With regard to such faculty and staff, nothing in this Policy shall create an expectation of continued employment with the College or be construed to prevent or delay the College from taking any disciplinary action deemed appropriate (including suspension and immediate termination of employment) for any violation of state law, federal law or College policy.

CERTIFICATION OF COMPLIANCE

At the conclusion of the hearing and appeal (if any), the Chancellor or Vice Chancellor for Student Services shall certify that the substantial rights of student complaints and respondents as established in the Arkansas Student Due Process and Protection Act, codified at Ark. Code Ann. § 6-60-1401 et seq., have been followed. The certification shall be maintained in the administrative file.

TIME PERIODS

The College will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient a manner as possible.

Any party may request an extension of any deadline by providing the Title IX Coordinator or his or her respective deputies with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

The Title IX Coordinator may also modify timelines in cases where information is not clear, judged to be incomplete, relevant parties are not available for interview, absence of an advisor, concurrent law enforcement activity, the need for language assistance or disability accommodation and/or other circumstances that may arise.

RETALIATION PROHIBITED

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. Part 106, or this policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including changes against an individual for code of conduct violations that do not

involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sex discrimination of harassment, for the purpose of interfering with any right or privilege secured by Title IX, 34 C.F.R. Part 106, or this policy, constitutes retaliation. However, the exercise of rights protected under the First Amendment does not constitute retaliation.

FALSE REPORTS

Willfully making a false report of sexual harassment or submitting false information during these proceedings is a violation of College policy and is a serious offense. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Any person who willfully makes or participates in making a false or frivolous report of discrimination, harassment, retaliation or sexual misconduct will be subject to disciplinary action. False reporting may also violate state criminal statutes and civil defamation laws.

EXTERNAL REPORTING AGENCIES

Although complainants are encouraged to resolve their grievances related to discrimination by utilizing this Complaint/Grievance Procedure, they may have the right to file a complaint directly with the following agencies. Individuals who wish to file complaints with these external agencies should make contact as soon as possible and verify any applicable time limits and deadlines

OFFICE OF CIVIL RIGHTS (OCR)
U.S. Department of Education
1999 Bryan St., Suite 1620, Dallas, TX 75201-6810
Toll Free: 1-800-421-3481
Telephone: 214-661-9600
Fax: 214-661-9587
Email: OCR.Dallas@ed.gov

NSF Grantees Only
National Science Foundation
Office of Diversity and Inclusion
2415 Eisenhower Ave.,
Alexandria, VA 22314
Telephone: 703-292-8020
Fax: 703-292-9072
Email: programcomplaints@nsf.gov

EFFECTIVE DATE

The College reserves the right to make changes and amendments to this Policy as needed, with appropriate notice to the campus community. However, the Policy in force at the time that a Complaint is filed will be the Policy used throughout the investigation, hearing, and any appeals.

RETENTION OF RECORDS

For a period of at least seven years, the College will maintain the records of:

- Each sexual harassment investigation, including any determination regarding responsibility, any recordings or transcripts, disciplinary sanctions, and remedies provided to the complainant
- Any appeal and the result therefrom
- Any informal resolution and the result therefrom
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will be made publicly available on the College's website.
- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, along with documentation of the College's bases for its conclusion that its response was not deliberately indifferent.

Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely.

DEFINITIONS

COMPLAINANT

Any individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of the filing of a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. Any person may report sex discrimination, including harassment, whether or not the person reporting is the person alleged to be the victim of discrimination or harassment.

CONSENT:

Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, if those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. If coercion, intimidation, threats, or physical force are used, there is no consent.

If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. Incapacitation can be due to alcohol or drugs or being asleep or unconscious. This policy also covers incapacity due to mental disability, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Brundage, etc. is prohibited, and administering one of these drugs to another person is a violation of this policy. More information on these drugs can be found at http://www.911rape.org/

Use of alcohol or other drugs will never function as a defense to a violation of this policy. An individual violates this policy if the individual initiates and engages in sexual activity with someone who is incapacitated, and (1) the individual knew the other person was incapacitated, or (2) a sober reasonable person under similar circumstances as the person initiating the sexual activity would have known the other person was incapacitated.

There is also no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes overt threats, implied threats, intimidation, and coercion that overcome resistance or produce consent.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Under Arkansas law, the age of consent varies with the degrees of assault, the age of the actor, and the relationship of the actor to the other party. For specific information, please refer to Arkansas statutes (e.g., Arkansas Code Annotated § 5-14-125, Sexual Assault in the Second Degree).

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. In addition, previous relationships or prior consent cannot imply consent to future sexual acts.

DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such relationship is determined based on consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

DAYS

Refers to working days, rather than calendar days, unless otherwise specified.

DOMESTIC VIOLENCE

The term includes felony or misdemeanor crimes of violence committed by a current spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the laws of Arkansas. Under the Arkansas law on domestic abuse, "family or household members" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabitated together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together.

EDUCATION PROGRAM OR ACTIVITY

Includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by an officially recognized student organization.

FORMAL COMPLAINT

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

PARTY

The complainant or respondent.

PREPONDERANCE OF THE EVIDENCE

A standard of proof where the conclusion is based on facts that are more likely true than not.

RESPONDENT

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

SANCTIONS

The determination of sanctions to be imposed against a respondent who is found to have been responsible for violating this policy will depend upon the nature and gravity of the misconduct, any record of prior discipline for a violation of this Policy, or both. Sanctions against students may include, without limitation, expulsion or suspension from the College, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions. Sanctions against employees and other non-students may include, without limitation, a written reprimand, disciplinary probation, suspension, termination, demotion, reassignment, revision of job duties, reduction in pay, exclusion from campus or particular activities, and/or educational sanctions deemed appropriate.

SEXUAL ASSAULT

The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A nonforcible sex offense includes incest (*i.e.*, the nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law) and statutory rape (*i.e.*, nonforcible sexual intercourse with a person who is under the statutory age of consent). A forcible sex offense is any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. A forcible sex offense includes:

- **Forcible rape**: the penetration, no matter how slight, of the vagina or anus with any part of the body or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Forcible sodomy**: Oral or sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;

- **Sexual assault with an object**: Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because his/her temporary or permanent or physical incapacity.
- **Forcible fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against that person's will in instances where the victim is incapable of giving consent because of his/her youth or because his/her temporary or permanent or physical incapacity.

SEXUAL HARASSMENT

Sexual harassment is conduct on the basis of sex constituting one of the following:

(1) An employee of the College conditioning the provision of an aid, benefit, or service of the institution 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 the College's educational programs or activities; or

(3) Any of the following:

(A) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) and this policy

(B) "Dating violence" as defined in 34 U.S.C. 12291(a)(10) and this policy

(C) "Domestic violence" as defined in 34 U.S.C. 12291(a)(8) and this policy

(D) "Stalking" as defined in 34 U.S.C. 12291(a)(30) and this policy

STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

SUPPORTIVE MEASURES

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without a fee or charge to the complaint or 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 recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment or deter sexual harassment.

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