



# Pima County Community College District Administrative Procedure

This AP replaces AP 5.10.03

<u>AP Title:</u>	<u>Discrimination, Harassment, and Retaliation – Prevention and Complaint Procedures</u>
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<u>Board Policy Title &amp; No.:</u>	<u>Prevention of Discrimination, Harassment, and Retaliation, BP 2.03</u>
<u>Legal Reference:</u>	<u>Title VII; Title IX; ADA; 34 CFR 106, et seq.; ARS 41-1401, et seq.</u>
<u>Cross Reference:</u>	<u>Student Complaints, AP 3.31.01; Nondiscrimination of Students on the Basis of Disability - Academic Adjustments and other Accommodations, AP 3.46.03; Complaint Procedures for Students with Disabilities, AP 3.46.06; Employee Handbook; Student Code of Conduct</u>

## SECTION 1: Purpose

1.1 Pima Community College (“College”) is an equal opportunity, affirmative action institution.<sup>1</sup> The College does not discriminate on the basis of race,

<sup>1</sup> Defined terms are capitalized throughout this AP. Please see Section 16 for a Glossary of Definitions. Unless specified otherwise, all terms used in this AP that are not specifically defined in the Glossary of Definitions, including within the definitions themselves, shall be interpreted using their common dictionary definitions.

color, religion or irreligion, ethnicity, national origin, age, sex, disability (actual or perceived), sexual orientation, gender identity or expression, veteran or military status, or any other unlawful basis.

- 1.2 The College is committed to maintaining a safe and equitable workplace and educational environment in which no member of the College Community is denied full access to the College’s educational programs and services or employment opportunities because of unlawful discrimination or harassment. The College will not tolerate unlawful discrimination or harassment of any kind against any member of the College Community.

## SECTION 2: Applicability and Scope

### 2.1 Covered Individuals

All provisions of this AP apply to all members of the College Community, including Students, Employees, applicants for admission or employment, visitors, Volunteers, and contractors, unless specified otherwise.

### 2.2 Covered Locations and Activities

All provisions of this AP are applicable on all College Property and during all Ordinary College Operations and College Sponsored Activities, on or off campus, regardless of location, unless specified otherwise.

### 2.3 Online Activity and Social Media

2.3.1 This AP applies to all online, telephonic, and otherwise virtual activity, including use of social media, that

- Occurs on College Property;
- Occurs during or has a material adverse effect on Ordinary College Operations;
- Involves a Matter of Substantial College Interest;
- Involves the use of College IT Systems.

2.3.2 This AP may apply to discriminatory or harassing communications posted to social media sites or other online venues by Students.

Employees, or other members of the College Community, even if College IT Systems were not used and/or the College does not control the social-media site or online venue, if the communications can reasonably be shown to be disruptive to Ordinary College Operations.

2.3.3 Social media activity and other forms of online communication that are protected by the First Amendment may not be the subject of disciplinary or other adverse action pursuant to this AP. However, the College may still provide Supportive Measures (see Section 6 of this AP) to members of the College Community affected by such communications.

#### 2.4 Additional Covered Events and Circumstances

This AP may also apply to certain events and circumstances involving members of the College Community that do not occur on College Property, during Ordinary College Operations, or during College Sponsored Activities if those events 1) effectively deprive one or more members of the College Community of access to or the benefits of, or subject them to Discrimination or Harassment in, the College's Education Programs and Activities, or 2) involve a Matter of Substantial College Interest.

#### 2.5 Questions About Applicability and Scope

Questions about this AP's applicability and scope, or other issues related to its interpretation or implementation, including potential conflicts with other policies and procedures, will be resolved by the Chancellor (or designee) and are not subject to further review.

### **SECTION 3: Additional Policies and Procedures – Employee Handbooks and Student Codes of Conduct**

3.1 The Chancellor authorizes the Provost and the Chief Human Resources Officer to develop, publish, and administer additional policies and procedures, including Standard Operating Procedures (“SOPs”), consistent with and in furtherance of the requirements, goals, and limitations of this AP, including, but not limited to, Employee Handbooks and Student Codes of Conduct.

3.2 Additional policies and procedures, including the Employee Handbook and Student Code of Conduct, may expand upon the rights and modify the

procedures stated in this AP, if doing so is determined to be in the best interests of the efficient and equitable administration of this AP, provided they do not remove or materially restrict any rights provided for in this AP.

- 3.3 Any questions about potential conflicts or inconsistencies between the requirements of this AP and the additional provisions of the Employee Handbook, the Student Code of Conduct, or any other related SOPs will be resolved by the Chancellor or designee and are not subject to further review.

#### **SECTION 4: Prohibited Discrimination and Harassment**

- 4.1 The College strictly prohibits, will not tolerate, and shall endeavor to effectively address, remediate, and eliminate all forms of Discrimination and Harassment that occur in violation of this AP, including, but not limited to, Discrimination or Harassment on the basis of a Protected Class, Retaliation, Title IX Sexual Harassment, and other conduct that creates or contributes to a Hostile Environment.
- 4.2 The College reserves the right to address other offensive or disruptive conduct that a) does not rise to the level of creating or contributing to a Hostile Environment, or b) is not based on a Protected Class through the College's other applicable policies and procedures, including, but not limited to, Employee Handbooks and the Student Codes of Conduct.
- 4.3 The College recognizes that acts of Discrimination or Harassment may be committed by any individual(s) against any other individual(s), regardless of their respective status, even if they are both members of the same Protected Class.

#### **SECTION 5: Retaliation**

- 5.1 Retaliation is a form of unlawful Discrimination prohibited by this AP and will not be tolerated by the College.
- 5.2 Acts of Retaliation against persons who have reported or submitted a Complaint about Discrimination or Harassment, participated in the investigation or resolution of a report or Complaint about Discrimination or Harassment (e.g., as a Complainant, Respondent, witness, Advisor, or decision-maker), or engaged in other Protected Activity pursuant to this AP are prohibited, will not be tolerated by the College, and should be reported immediately (see Section 10.31 of this AP).

5.3 Retaliation does not include the following:

- Adverse action taken against an individual for 1) making materially false, bad-faith statements or Frivolous allegations in the course of College proceedings undertaken pursuant to this AP or other College policies, or 2) refusing to cooperate or otherwise interfering with those same College proceedings when required to do so.
- The legitimate exercise of rights otherwise protected under the First Amendment.

**SECTION 6: Supportive Measures**

- 6.1 The College shall offer Supportive Measures to affected members of the College Community upon notice of alleged Discrimination or Harassment, even if a Complaint has not been submitted.
- 6.2 If a Complaint is submitted, Supportive Measures shall be offered equally to both Complainants and Respondents until at least such time as a decision has been made on the Complaint pursuant to applicable College policy.
- 6.3 The College will endeavor to maintain the privacy of members of the College Community receiving Supportive Measures and avoid unnecessary burdens on individuals involved, provided that doing so does not impair the College's ability to provide the Supportive Measures or to investigate or fully address Discrimination or Harassment.
- 6.4 Other members of the College Community, including Employees, will not be informed of the reason why an individual is receiving a Supportive Measure unless disclosing that information is necessary to provide the Supportive Measure.

**SECTION 7: Emergency Removal**

- 7.1 The College may immediately remove a Student, Employee, or other member of the College Community who is alleged to have engaged in prohibited Discrimination or Harassment from College Property and/or College Sponsored Activities, including Education Programs and Activities, if the College determines that the individual in question presents an

immediate threat to the health or safety of the College Community or a significant risk of Substantial Disruption to Ordinary College Operations.

- 7.2 The specific emergency-removal procedures to be followed, including any available processes to appeal or review emergency-removal decisions, will vary, depending on the type of alleged Discrimination or Harassment and whether the individual to be removed is a Student, Employee, or other member of the College Community. Unless specified otherwise, the emergency removal of Students pursuant to this AP will be conducted following the procedures stated in the Student Code of Conduct, and the emergency removal of Employees will be conducted pursuant to the procedures in the Employee Handbook.
- 7.3 Nothing in this AP shall impair the College Police Department’s authority to immediately remove any individuals from College Property in the interest of public safety.

#### **SECTION 8: Court-Issued Orders of Protection/“No Contact” Orders**

- 8.1 Although individual members of the College Community may receive lawful civil court orders in their personal capacities related to discrimination and harassment, including orders of protection and “no contact” orders, from local, state, and federal courts, the College is generally not in a position, or legally responsible, to enforce or otherwise take action on civil court orders, unless the College itself is a party to or subject of the same orders.
- 8.2 Members of the College Community with questions about complying with, or who believe other individuals are engaging in violations of, civil court orders on College Property or at College Sponsored Activity, may contact the College Police Department for assistance.
- 8.3 When necessary and appropriate to protect the College Community as a whole from specific incidents of Discrimination and Harassment, particularly when public safety is threatened, the College may seek injunctions, orders of protection, or “no contact” orders on behalf of the College itself from local, state, or federal courts.
- 8.4 The College itself cannot seek personal orders of protection, “no contact” orders, or other forms legal relief from local, state, and federal courts on behalf of individual Students, Employees, or other members of the College Community who may be affected by Discrimination or Harassment.

- 8.5 The College may, in addition to other Supportive Measures, refer members of the College Community affected by Discrimination and Harassment to low- or no-cost legal services outside the College to assist them with related legal matters, including, but not limited to, seeking or defending against such court orders.

### **SECTION 9: College-Wide, Inter-Departmental Cooperation**

- 9.1 The College is committed to providing a unified, holistic approach to preventing and responding to Discrimination and Harassment, regardless of the form it takes, where or when it occurs, or the status within the College Community of the persons perpetrating or affected by it (e.g., Student, Employee, visitor).
- 9.2 The College recognizes that individual incidents may include multiple forms of Discrimination and Harassment as well as other violations of College policy; involve various combinations of Students, Employees, and other members of the College Community; and require the simultaneous attention of multiple College departments. Accordingly, all College departments shall share information, combine efforts, and otherwise cooperate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to Discrimination and Harassment.

### **SECTION 10: Complaint and Reporting Processes and Resources**

Different forms of Discrimination and Harassment are frequently covered by different laws and regulations, may afford different or additional rights and responsibilities, and may require that the College follow different or additional procedures. Additionally, different College departments may be tasked with administering the College's policies and procedures related to one or more specific forms of Discrimination and Harassment.

#### **10.1 Submitting Complaints against Employees**

Unless specified otherwise in this AP, any member of the College Community may submit a report or Complaint about an Employee engaging in prohibited Discrimination and Harassment pursuant to the processes found in the Employee Handbook. The College's Office of Dispute

Resolution (“ODR”) shall be notified of all such complaints. Reports and Complaints may also be submitted directly to ODR (see Section 10.3).

## 10.2 Submitting Complaints against Students

Unless specified otherwise in this AP, any member of the College Community may submit a report or Complaint about a Student engaging in prohibited Discrimination and Harassment pursuant to the processes found in the Student Code of Conduct. ODR shall be notified of all such complaints. Reports and Complaints may also be submitted directly to ODR (see Section 10.3).

## 10.3 Submitting Complaints through the Office of Dispute Resolution (ODR)

Complete Information about ODR and how reports and Complaints of Discrimination and Harassment may be submitted, including anonymously, can be found on ODR’s page on the College’s website.

10.3.1 Any member of the College Community may contact ODR to report or initiate a Complaint about any form of Discrimination or Harassment in violation of this AP. Members of the College Community may also contact ODR to seek guidance on the College’s Discrimination or Harassment policies and procedures, as well as any other matter involving questions about or potential violations of College policy. (Please see ODR’s page on the College’s website for additional information, including contact information).

10.3.2 ODR will conduct an initial intake of the report or Complaint and assist in referring individuals reporting potential Discrimination or Harassment to the appropriate responsible College offices, depending on the nature of alleged Discrimination or Harassment and the respective roles of the parties in the College Community (e.g., Students, Employees).

10.3.3 ODR will be available to provide neutral investigatory services upon the request of the responsible decision-makers to develop the facts underlying reported incidents of potential Discrimination or Harassment, including but not limited to collecting and summarizing relevant documentation and interviewing parties and witnesses.



10.3.4 ODR may likewise facilitate or otherwise assist with the informal resolution of disputes involving alleged Discrimination or Harassment for which the individuals reporting such incidents do not wish to submit formal Complaints. ODR will not itself administer Complaint processes, hold hearings, issue decisions, or conduct appeals.

#### 10.4 Complaint Decision-Making Authority

10.4.1 The specific College offices or administrators with decision-making authority over issues related to Complaints alleging Discrimination and Harassment, or the process by which those decision-makers are determined, will generally be specified in the applicable College policies or procedures (e.g., the Student Code of Conduct, the Employee Handbook).

10.4.2 Any questions or ambiguity regarding which College offices or administrators have decision-making authority, or primary decision-making authority (in the event a Complaint involves multiple forms of Discrimination or Harassment and implicates more than one policy or procedure), will be resolved by the Chancellor (or designee).

10.4.3 Per Section 9 above, the College shall endeavor to prevent the issuance of multiple or conflicting decisions about the same or substantially similar factual allegations by ensuring that all College departments with administrative responsibility for the parties and/or policies at issue in a Complaint coordinate their efforts, cooperate in the Complaint-resolution process, and acknowledge or agree upon who the decision-maker(s) will be. The Chancellor (or designee) shall resolve any disputes about who should be the ultimate decision-maker(s) on particular Complaints, allegations, or policy matters.

#### 10.5 Designees

10.5.1 If a specific decision-maker is not clearly identified, or if a specified decision-maker has a material conflict, the Chancellor will designate a College Employee with appropriate administrative authority to issue a decision on the Complaint.

10.5.2 If the Chancellor determines, in consultation with the College's General Counsel, that a College Employee cannot or should not be the decision-maker (e.g., in the case of a College-wide conflict), a neutral third-party from outside the College will be retained to hear and decide the Complaint.

10.5.3 All designees, including those retained from outside the College, must be neutral third-parties with no direct personal connection to or interest in the parties to or events at issue in a Complaint. The College does not require that designees have no prior knowledge of the facts or parties involved in such Complaints.

## 10.6 Complaints against the Chancellor

A Complaint alleging that the Chancellor personally engaged in unlawful Discrimination or Harassment will be referred to the General Counsel and Governing Board Chair to be resolved in accordance with the Board Bylaws, Article on Response to Complaints.

## 10.7 Timelines for Reporting or Submitting Complaints

10.7.1 The College strongly encourages members of the College Community to report Discrimination or Harassment in violation of this AP as soon as possible and preferably within ninety (90) days of an alleged incident. However, the College generally does not set time limits on making reports of or submitting Complaints about Discrimination and Harassment. If individuals alleged to have engaged in Discrimination or Harassment are no longer Students at or Employees of the College, or are otherwise no longer subject to the College's jurisdiction, the College's ability to investigate and respond to such reports and Complaints may be substantially limited.

10.7.2 Unless specified otherwise, the designated decision-makers have the discretion to determine whether or not to initiate or continue investigations into, as well as other responsive proceedings concerning, alleged Discrimination or Harassment when it is determined that a significant amount of time has passed since the date of the event(s) at issue.

10.7.3 If, due to the passage to time, a designated decision-maker determines that it is not reasonably possible to continue an investigation or other responsive proceeding in accordance with

the requirements of College policy, the decision-maker may still document the allegations for future reference, offer Supportive Measures to affected individuals, or take other formal or informal action that the decision-maker deems appropriate.

## 10.8 Effect of Time on Applicable Policies and Procedures

10.8.1 Unless specified otherwise, the College will generally apply the policies and procedures in effect when the events at issue in a report or Complaint of Discrimination or Harassment occurred or are alleged to have occurred.

10.8.2 The College may apply current policies or procedures, notwithstanding when the events at issue allegedly occurred, when legally required to do so or if the College determines, at its discretion, that doing so would a) present a significantly lower administrative burden on the College, and b) not deprive the parties involved of any significant rights afforded to them under the old policies that are no longer available.

## 10.9 Complaints to Outside Agencies

In addition to using the College's internal procedures, members of the College Community also have the right to file claims of Discrimination, Harassment, and Retaliation with the following state and federal agencies (please contact the respective agencies for applicable filing requirements and timeframes):

United States Department of Education  
Office for Civil Rights (OCR)  
1244 Speer Blvd., Suite 310  
Denver, Colorado 80204-3582  
Phone: (303) 844-5695  
Fax: (303) 844-4303  
Email: [ocr.denver@ed.gov](mailto:ocr.denver@ed.gov)

The Office of the Arizona Attorney General  
Civil Rights Division (ACRD)  
402 W. Congress St., Ste. S215  
Tucson, Arizona 86701-1367  
Phone: (520) 628-6500  
TDD: (520) 628-6872

The United States Equal Employment Opportunity Commission  
EEO/AA/ADAC  
3300 N. Central Ave., Ste. 690  
Phoenix, Arizona 85012-2504  
Phone: (602) 640-5000  
Phone: (800) 669-4000  
TTY: (800) 669-6820  
Fax: (602-640-5017

#### 10.10 Federal Timely Warning Obligations

Pursuant to the Clery Act, the College may be required to issue “timely warnings” upon receipt of reports of certain types of Discrimination or Harassment that pose or may pose a serious or continued threat to the overall College Community (e.g., Sexual Assault and Stalking). If timely warnings are required, the College will ensure that the names and other personally identifying information of the persons reporting the Discrimination and Harassment in question are not disclosed.

#### 10.11 Good-Faith Mistakes vs. False Allegations

10.11.1 The College understands that genuine mistakes may occur, and individuals’ perceptions may reasonably differ, during the course of proceedings undertaken pursuant to this AP. Persons who make allegations or provide information in good faith that is later found to be erroneous or that could not be proven by a Preponderance of the Evidence will not be subject to disciplinary or other adverse action by the College.

10.11.2 Making Knowingly false, Malicious, or Frivolous allegations of Discrimination or Harassment pursuant to this AP is a serious offense and may result in separate disciplinary proceedings pursuant to the Employee Handbook or Student Code of Conduct.

10.11.3 Witnesses and parties who Knowingly provide false or materially misleading evidence to Investigators or decision-makers, or who refuse to participate or cooperate when required to do so (i.e., absent a Legally Protected Privilege), during any College proceedings undertaken in accordance with this AP may be subject to discipline pursuant to the Employee Handbook, Student Code of Conduct, or other applicable College policies and procedures.

## 10.12 Amnesty for Lesser Collateral Misconduct

10.12.1 In the interest of encouraging the College Community to report and participate fully in investigation into and resolution of incidents of alleged Discrimination and Harassment, the College generally refrains from pursuing disciplinary action against parties and witnesses for lesser misconduct in which they may have engaged collateral to or during the Discriminatory or Harassing incidents in question (e.g., alcohol consumption).

10.12.2 This general policy does not apply to more serious collateral misconduct in which the parties may have engaged (e.g., physical violence) or to conduct that is unrelated to the specific Discrimination or Harassment allegations being investigated.

10.12.3 The College may still require parties and witnesses determined to have engaged in lesser collateral misconduct to participate in non-punitive educational activities, even if the College refrains from pursuing disciplinary action.

## 10.13 Counter-Complaints

10.13.1 The College generally permits the submission of Counter-Complaints of Discrimination or Harassment, provided they are made in good faith and not for the purpose of Retaliation or to cause unnecessary disruption or delay.

10.13.2 The College may conduct a preliminary investigation (e.g., through the Office of Dispute Resolution (“ODR”)) to assess if there is a sufficient factual basis to believe that a Counter-Complaint is made in good faith and not for a prohibited reason.

10.13.3 Counter-Complaints determined to be brought in bad faith or for another prohibited reason will be dismissed, and Respondents submitting them may be referred for possible separate disciplinary proceedings.

10.13.4 Counter-Complaints determined to be made in good faith will generally be investigated and resolved at the same time and in the course of the same proceedings as the associated original

Complaints, unless the College, in its sole discretion, determines that the investigation and/or resolution of a Counter-Complaint should be 1) conducted separately, and/or 2) delayed until after the resolution of the original Complaint.

10.13.5 Counter-Complaints alleging Sexual Harassment or other forms of sex- or gender-based Discrimination or Harassment must be referred to and evaluated by the Title IX Coordinator (see Section 14 of this AP), even if the allegations are primarily about another form of Discrimination or Harassment. Allegations satisfying the definition of Title IX Sexual Harassment may only be investigated and resolved through the College’s Title IX Sexual Harassment process (see Section 14).

#### 10.14 Advisors

Unless specifically stated otherwise, the availability and scope of participation of Advisors in Discrimination and Harassment Complaint proceedings at the College will be determined according to the applicable processes to be followed (e.g., Employee Handbook, Student Code of Conduct).

#### 10.15 Considerations when a Respondent is Both a Student and an Employee

10.15.1 If a Complaint is against a Respondent who is both a Student and an Employee, the College will generally follow the Complaint process most applicable to the status of the Respondent when allegedly engaging in the majority of the allegations (e.g., either the Employee Handbook or the Student Code of Conduct), if different processes could apply.

10.15.2 If such a Respondent is ultimately found responsible a violation of this AP, any Educational Measures or Disciplinary Sanctions imposed on the Respondent may relate to both the Respondent’s status as a Student and an Employee (e.g., the Respondent could be Expelled as a Student and Terminated as an Employee), subject to any applicable appeal processes for specific Educational Measures or Disciplinary Sanctions.

#### 10.16 Disability Accommodations in Complaint Processes

The College is committed to providing reasonable accommodations to ensure that qualified Students, Employees, and other members of the College Community with disabilities have equal access to all aspects of the administration of this AP. Anyone requesting such an accommodation should contact the College’s Accesses and Disabilities Resources Office (“ADR”).

#### 10.17 Effect of Collateral Criminal or Civil Legal Proceedings

10.17.1 The College is generally not prevented from taking responsive action by ongoing collateral criminal or civil legal proceedings based on the same general allegations as a Complaint received by the College. Likewise, the fact that criminal charges have been dropped or reduced, or civil lawsuits settled, does not affect ongoing related matters at the College.

10.17.2 At the request of law enforcement agencies, the College may institute reasonable delays in College proceedings if the College determines that doing so would be in the best interests of the administration of justice and would not materially interfere with the College’s ability to effectively investigate or respond to the matter.

10.17.3 College proceedings will not be delayed to accommodate civil lawsuits or other non-criminal legal matters.

#### 10.18 Central Repository for all Complaints of Discrimination and Harassment

10.18.1 In accordance with Section 15 below, all Complaints of Discrimination and Harassment in violation of this AP shall be recorded and maintained in a centralized electronic database, administered by the Office of the General Counsel or designee (e.g., the Office of Dispute Resolution (“ODR”), regardless of the types of conduct alleged, the roles of the Complainant and/or Respondent within the College Community, or the specific College departments receiving and responding to the Complaints.

10.18.2 The College shall monitor this central Complaint repository and periodically review the information contained therein to identify any trends in the reporting of Discrimination and Harassment at the College, to improve the College’s investigation and resolution

processes, and for any other purposes related to the overall reduction of Discrimination and Harassment at the College.

#### 10.19 Confidential and Anonymous Complaints

10.19.1 Persons reporting alleged violations of this AP may request that their Complaints remain confidential. The College will endeavor to honor such requests when not prohibited from doing so (e.g., as with Formal Title IX Complaints (see Section 14.6.4 of this AP)) and when the College’s obligation to protect the College Community does not override the request for confidentiality.

10.19.2 Anonymous Complaints may be submitted through a toll-free telephone number and/or anonymous website, which can be found on the Office of Dispute Resolution (“ODR”)’s page on the College’s website.

10.19.3 Persons requesting confidentiality or submitting anonymous Complaints should be aware that doing so, even when permitted, may significantly limit the College’s ability to investigate and respond to such Complaints.

#### 10.20 Use of Email for Complaint-Related Written Communication and Determining Effective Dates

10.20.1 All written communication related to Complaints made pursuant to this AP shall be conducted by email unless alternative means are required due to extenuating circumstances and expressly approved in writing by a College administrator with authority over the Complaint process in question or by the College’s Access and Disabilities Resources (“ADR”) Office as part of an accommodation.

10.20.2 Current Employees and Students participating in Complaint proceedings in any capacity (e.g., as Complainants, Respondents, Advisors, or witnesses) must conduct all Complaint-related written correspondence using their assigned “pima.edu” email accounts unless specifically authorized in writing by the College to use another form of correspondence for a specific purpose (e.g., to forward to the College Discriminatory or Harassing messages received at a personal account).



10.20.3 All Complaint-related email sent at or before 5:00 p.m. on a Business Day will be deemed received and read by the recipient on the date it was sent. Complaint-related email sent after 5:00 p.m. will be deemed received and read by the recipient on the next Business Day.

## 10.21 Duty of Employees to Report Discrimination and Harassment

10.21.1 Employees who are Supervisors or who instruct or advise Students are required to report all potential Discrimination or Harassment that comes to the Employees' attention in the course and scope of their College employment, either because they themselves witness it or because it is reported to them verbally or in writing.

10.21.2 Reports must be made as soon as possible (generally within one (1) Business Day, unless specified otherwise) and may be submitted in accordance with the provisions of the Employee Handbook or to the College's Office of Dispute Resolution ("ODR").

10.21.3 The duty of certain Employees to report Discrimination and Harassment pursuant to this AP is independent of and in addition to the legal "Mandatory Reporting" duty of all Employees to report child abuse, child neglect, and other "reportable offenses" as defined by law (see AP 8.05.03, "Mandatory Reporting - Abuse of a Minor or Child").

## SECTION 11: Disability Discrimination and Harassment

Different or additional laws apply to disability Discrimination and Harassment in federally funded higher educational institutions, such as the College (e.g., the ADA, Section 504). Accordingly, the College has implemented APs specifically prohibiting and providing processes to address and respond to Complaints of disability Discrimination and Harassment (see AP 3.46.03, AP 3.46.06, and AP 5.10.04).

### 11.1 Reporting or Submitting a Complaint of Disability Discrimination or Harassment

11.1.1 Unless otherwise specified elsewhere in College policy or procedures, any report or Complaint regarding disability

Discrimination and Harassment may be made to the College's Access and Disabilities Resources Office ("ADR") (see the College's website for contact information). Reports and Complaints submitted to ADR shall be shared with the College's central repository pursuant to the recordkeeping provisions of this AP (see Section 10.18 and Section 15).

11.1.2 Other College offices (e.g., ODR, Human Resources ("HR"), the Office of the Dean of Students) receiving such reports or Complaints should refer them to the office of the College's ADR Director (see the College's website for contact information).

## 11.2 Complaint Procedures Followed

Unless specified otherwise in College policy, Complaints of Discrimination and Harassment on the basis of disability will be addressed as follows:

### 11.2.1 Complaints against Students

Complaints alleging that a Student engaged in disability Discrimination or Harassment against any member of the College Community (i.e., in which a Student is the Respondent) shall be addressed according to the procedures found in the Student Code of Conduct and in conjunction with the College's ADR Director (or designee).

### 11.2.2 Complaints against Employees

Complaints alleging that an Employee engaged in disability Discrimination or Harassment against any member of the College Community (i.e., in which an Employee is the Respondent) shall be addressed according to the Complaint procedures found in the Employee Handbook and in conjunction with the College's ADR Director (or designee).

### 11.2.3 All Other Complaints

Unless specified otherwise elsewhere in College policy or procedure, disability-based Discrimination and Harassment Complaints against individuals other than Students and Employees (e.g., visitors, Volunteers, contractors retained by the College) will be heard and decided by the College's ADR Director (or designee).

## SECTION 12: Discrimination and Harassment Not Based on Disability or Sex/Gender

### 12.1 Reporting or Submitting a Complaint

12.1.1 Any report or Complaint of Discrimination and Harassment in violation of this AP (by a Student, Employee, or any other member of the College Community) may be made to the College’s Office of Dispute Resolution (“ODR”) (see the College’s website for contact information).

12.1.2 Complaints against Students may also be submitted to the Office of the Dean of Students (or designee) pursuant to the processes stated in the Student Code of Conduct. Please see the Dean of Student’s page on the College’s website for additional information.

12.1.3 Complaints against Employees may also be submitted to Human Resources through the Complaint processes stated in the Employee Handbook. Additional information can be found on Human Resources’ page on the College’s website.

### 12.2 Complaint Procedures Followed

Unless specified otherwise in College policy, Complaints of Discrimination and Harassment on any prohibited basis other than disability (covered in Section 11 of this AP) and sex/gender (covered in Sections 13 and 14 of this AP); including, but not limited to, race, ethnicity, national origin, religion or irreligion, age, veteran or military status; will be addressed as follows:

#### 12.2.1 Complaints against Students

Complaints alleging that a Student engaged in any other form of prohibited Discrimination or Harassment against any member of the College Community (i.e., in which a Student is the Respondent) in violation of this AP shall be addressed according to the procedures found in the Student Code of Conduct.

#### 12.2.2 Complaints against Employees

Complaints alleging that an Employee engaged in any other form of prohibited Discrimination or Harassment against any member of the College Community (i.e., in which an Employee is the Respondent) in violation of this AP shall be addressed according to the procedures found in the Employee Handbook.

### 12.2.3 All Other Complaints

Unless specified otherwise elsewhere in College policy or procedure, Discrimination and Harassment Complaints against individuals other than Students and Employees (e.g., visitors, Volunteers, contractors retained by the College) that are not based on alleged disability or sex/gender Discrimination or Harassment may be submitted to the College’s Office of Dispute Resolution (“ODR”) and may be heard and decided by a College official designated by the Chancellor (or designee) in accordance with the College’s generally applicable complaint-resolution process, which can be found on ODR’s page on the College’s website.

## SECTION 13: Sex-/Gender-Based Discrimination & Harassment Generally

### 13.1 Differentiating between Non-Title IX and Title IX Sexual Harassment

Although the College does not tolerate any form of Discrimination or Harassment on the basis of sex or gender and will respond to all reports or Complaints about such misconduct, how the College responds will depend on the nature and severity of the alleged misconduct. Specific types of sexual Discrimination and Sexual Harassment (typically the most severe, recurrent forms) must be addressed pursuant to the procedures proscribed by Title IX. This is generally referred to as Title IX Sexual Harassment.

### 13.2 Review of All Sex- and Gender-Based Discrimination and Harassment Allegations by the Title IX Coordinator

All reports or Complaints containing allegations of sex- or gender-based Discrimination or Sexual Harassment (even if those are not the primary forms of Discrimination or Harassment alleged) must be reviewed by the College’s Title IX Coordinator or designee to determine if the alleged misconduct meets the definition of Title IX Sexual Harassment (see Section 14.10). Allegations satisfying the definition of Title IX Sexual Harassment

may only be investigated and resolved through the College’s Title IX Sexual Harassment process (see Section 14).

### 13.3 Sex- and Gender-Based Discrimination or Harassment That Does Meet the Definition of “Title IX Sexual Harassment”

Certain forms of alleged misconduct committed against a member of the College Community related to that person’s sex or gender (including, but not limited to, biological sex, sexual orientation, gender identity, or gender expression) may violate this AP, as well as state or federal law (e.g., Title VII), even if the alleged misconduct does not meet the definition of Title IX Sexual Harassment and, thus, the jurisdictional requirements to be processed by the College pursuant to Title IX.

If the Title IX Coordinator determines that alleged misconduct does not meet Title IX’s jurisdictional requirements (see Section 14.10) but may still violate this AP, or if the party reporting the alleged misconduct does not wish to utilize the Formal Title IX Complaint process, any report or Complaint about sex- or gender-based Discrimination or Harassment may be forwarded or re-submitted as follows:

13.3.1 Through the College’s Office of Dispute Resolution  
Any report or Complaint about sex- or gender-based  
Discrimination or Harassment may be submitted to the College’s  
Office of Dispute Resolution (“ODR”). Additional information  
can be found on ODR’s page on the College’s website.

13.3.2 Complaints Against Employees  
Reports or Complaints about sex- or gender-based Discrimination  
or Harassment by an Employee may be submitted through the  
processes stated in the College’s Employee Handbook. Additional  
information and links to the Employee Handbook can be found on  
the College’s Human Resources (“HR”) department’s page on the  
College’s website.

13.3.3 Complaints Against Students  
Reports or Complaints about sex- or gender-based Discrimination  
or Harassment by a Student may be submitted through the  
processes stated in the College’s Student Code of Conduct.  
Additional information and links to the Student Code of Conduct

can be found on the Dean of Student's page on the College's website.

## SECTION 14: Title IX Sexual Harassment

Title IX Sexual Harassment is a specific category of sex- or gender-based Discrimination and Harassment under federal law (i.e., Title IX and associated regulations promulgated by the U.S. Department of Education) which requires certain different or additional action by the College. All Title IX Sexual Harassment qualifies as prohibited Discrimination and Harassment under this AP, but not all prohibited sex- and gender-based Discrimination and Harassment qualifies as Title IX Sexual Harassment. Questions about the distinction may be directed to the College's Title IX Coordinator.

### 14.1 Authority of the Title IX Coordinator

14.1.1 The College's Title IX Coordinator is designated as having the primary responsibility to oversee and coordinate the implementation of the Title IX Sexual Harassment portions of this AP, including, but not limited to, the resolution of Title IX Sexual Harassment Complaints and the delivery of required Title IX training.

14.1.2 The Title IX Coordinator (or designee) shall be primarily responsible for the College's response to reports and Complaints of Title IX Sexual Harassment, regardless of whether the parties involved are Students, Employees, or other members of the College Community.

### 14.2 Designation of Deputy Title IX Coordinators

14.2.1 The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to oversee the implementation of this AP within specific College departments, including, but not limited to Human Resources.

14.2.2 Regardless of their respective administrative supervisors, all Deputy Title IX Coordinators will report exclusively to the Title IX Coordinator for purposes of the administration of the Title IX Sexual Harassment provisions of this AP only.

14.2.3 All Deputy Title IX Coordinators shall be identified on the College’s website along with their respective contact information and designated areas or responsibility (e.g., Human Resources).

### 14.3 Designated “Officials with Authority” for Purposes of Title IX

14.3.1 Title IX requires that the College promptly respond to a Formal Title IX Complaint in a manner that is not Deliberately Indifferent when a College official with authority to address a Formal Title IX Complaint has actual knowledge of reported Title IX Sexual Harassment. For purposes of the Title IX Sexual Harassment provisions of this AP, such “Officials with Authority” are limited to the following:

- Title IX Coordinator
- Deputy Title IX Coordinators
- Chancellor
- Provost
- Chief Human Resources Officer

14.3.2 College Employees designated as “mandatory reporters” pursuant to AP 8.05.03 (“Mandatory Reporting – Abuse of a Minor Child”) are not necessarily “Officials with Authority” for purposes of this AP and Title IX.

### 14.4 The Title IX Pool

#### 14.4.1 Role and Responsibilities

The College will utilize a group of specially trained individuals, to serve a variety of roles in the Title IX process, including, but not limited to, Title IX Advisors, Title IX Hearing Officers, Title IX Appeal Panelists, and informal mediators. These individuals are referred to collectively as the College’s Title IX Pool.

#### 14.4.2 Membership

14.4.2.1 Membership selection for the Title IX Pool shall be at the discretion of the Title IX Coordinator and shall include, at a minimum, Employees (both academic and non-academic) with administrative responsibilities at the College that are not related directly to Title IX.

14.4.2.2 Employees whose responsibilities already include the administration of Title IX at the College, either specifically or in an oversight or compliance capacity, may not serve in the Title IX Pool, including, but not limited to, the Chancellor, the Provost, the General Counsel and other College legal staff, the Chief Human Resources Officer, , the Title IX Coordinator, any Deputy Title IX Coordinators, and personnel from the Office of Dispute Resolution (“ODR”).

14.4.2.2 At the Title IX Coordinator’s discretion, the College may draw upon qualified individuals from outside the College to serve in the Title IX Pool.

### 14.4.3 Required Training

All members of the Title IX Pool shall have completed specialized Title IX training and shall continue to receive and complete additional such training at least annually and more often as necessary as determined by the Title IX Coordinator. This training generally includes, but is not limited to, the following topics:

- The provisions of this AP and other College policies and procedures related to Discrimination and Harassment;
- Applicable laws, regulations, and federal guidance;
- Maintaining impartiality and objectivity and avoiding biases, including implicit bias;
- Determining and implementing appropriate Supportive Measures;
- Conducting thorough and impartial investigations;
- Conducting hearings and appeal proceedings;
- Conducting questioning, including cross-examination;
- Weighing evidence, including assessing credibility and relevance;



- How to reach decisions and generate clear, concise, evidence-based written findings;
- Determining and implementing appropriate Disciplinary Sanctions;
- Using technology commonly utilized in the Title IX process.

## 14.5 Reporting Title IX Sexual Harassment

### 14.5.1 Title IX Sexual Harassment may be reported to the College using any of the following methods:

- Contacting the Title IX Coordinator, a Deputy Title IX Coordinator, or another Official with Authority (see Section 14.3 of this AP) by any method, including, but not limited to, by telephone, email, or in-person (contact information can be found on the Title IX Coordinator’s website);
- Contacting the College’s Office of Dispute Resolution (“ODR”) by any method, including anonymously (contact information and instructions for submitting anonymous reports can be found on ODR’s website);
- Submitting a Formal Title IX Complaint (see Section 14.6 of this AP).

### 14.5.2 Title IX Sexual Harassment may be reported without submitting a Formal Title IX Complaint. The College will take appropriate action in response to all reports of Sexual Harassment (or other forms of Discrimination and Harassment), whether formal or informal. However, only Formal Title IX Complaints will be addressed according to the College’s Title IX process.

### 14.5.3 Individuals reporting Title IX Sexual Harassment shall be informed of the following:

- Their right to submit or not to submit a Formal Title IX Complaint;
- Their right to submit a Formal Title IX Complaint in the future, if they decline to do so at the time of reporting;

- Their right to receive Supportive Measures whether or not they submit a Formal Title IX Complaint;
- A Formal Title IX Complaint must be submitted in order for the College to initiate the Title IX Complaint Process.

#### 14.6 Submission of Formal Title IX Complaints

14.6.1 Formal Title IX Complaints must be submitted to the Title IX Coordinator or a designated Deputy Title IX Coordinator.

14.6.2 A Formal Title IX Complaint must 1) be in writing; 2) be signed by the Complainant; 3) include enough factual allegations to determine that, if proven to be true, Title IX Sexual Harassment may have occurred; and 4) request that the College investigate the allegations.

14.6.3 Only current Students and Employees, persons currently attempting to access the College's Education Programs and Activities, or the Title IX Coordinator may be a Complainant to a Formal Title IX Complaint. Complaints by former Students and Employees, and persons not currently attempting to access the College's Education Programs and Activities, may submit complaints of Sexual Harassment and other prohibited Discrimination and Harassment through other College processes.

14.6.4 Formal Title IX Complaints may not be submitted anonymously or confidentially (i.e., with the name of the Complainant withheld).

14.6.5 Once a Formal Title IX Complaint has been received, the College will offer Supportive Measures to both the Complainant and the Respondent equally. If the College was already providing Supportive Measures prior to the submission of the Formal Title IX Complaint, the College may continue to do so or provide new or appropriately modified Supportive Measures.

#### 14.7 Formal Title IX Complaints against Multiple Respondents

14.7.1 In the interest of fairness and clarity, all allegations in a single Formal Title IX Complaint should generally be against a single Respondent.

14.7.2 A single Formal Title IX Complaint may, at the discretion of the Title IX Coordinator (or designee) be brought against more than one Respondent if 1) all factual allegations arise from substantially the same event(s) and circumstances, 2) the Complainant clearly identifies which factual allegations are against which Respondent(s), and 3) doing so would not materially prejudice the interests of any party or the jeopardize the College’s full and fair resolution of the matter (e.g., by creating an unreasonable risk of unfair “guilt by association”).

#### 14.8 Discretionary Inclusion of Other Discrimination or Harassment Allegations in Formal Title IX Complaints

14.8.1 If a Formal Title IX Complaint alleges additional forms of Discrimination or Harassment prohibited by this AP, the Title IX Coordinator shall have the discretion to either 1) separate the additional allegations from the Formal Title IX Complaint and forwarded to the appropriate College department to address those allegations, or 2) direct that the additional allegations be investigated and resolved as part of the Title IX Complaint process in the same manner as the allegations of Title IX Sexual Harassment.

14.8.2 The Title IX Coordinator shall provide written notice to all parties of the decision.

#### 14.9 Notice to Respondent of a Formal Title IX Complaint

Upon receipt of a Formal Title IX Complaint and prior the commencement of the investigation, the Title IX Coordinator (or designee) shall provide timely written notice of the complaint to the Respondent. The written notice must include all of the following:

- The identities of the parties involved, including Complainant;
- A meaningful summary of the allegations, including the specific conduct in which the Respondent allegedly engaged that is believed to constitute Title IX Sexual Harassment, including the date and location when each incident of such conduct is alleged to have occurred;
- The College policies allegedly violated by the Respondent (including citations);

- A general description of the sanctions with may be imposed if the Respondent is determined to be responsible for the alleged violations;
- A statement of or citation/link to any applicable policies and procedures, including, but not limited to, this AP;
- A statement informing Respondents of their right to a Title IX Advisor;
- A statement informing Respondents that an investigation will be conducted and of their right to be accompanied by their inspect and review any evidence obtained during that investigation;
- A statement that the Respondent is presumed not responsible for the alleged violations until determined otherwise at the conclusion of the Formal Title IX Complaint process;
- A statement that College policy prohibits making false statements or knowingly submitting false information during any College investigation.

#### 14.10 Prohibition against “Gag Orders”

Notwithstanding any other College policies or procedures, the College may not impose a “gag order” on the parties to a Formal Title IX Complaint or otherwise restrict the ability of either party to discuss the allegations in, or to gather evidence during any investigation into, that Formal Title IX Complaint.

#### 14.11 Assessment of Formal Title IX Complaints - Mandatory & Discretionary Dismissals

##### 14.11.1 Mandatory Dismissal

14.11.1.1 Upon receipt of a Formal Title IX Complaint, the Title IX Coordinator (or designee) shall conduct an initial assessment to determine if all of the following Title IX jurisdictional requirements are met:

- If ultimately proven, all or part of the conduct alleged would constitute Title IX Sexual Harassment as defined in this AP;

- The alleged conduct occurred on College Property or during an Education Program or Activity or other College Sponsored Activity;
- The alleged conduct occurred in the United States; and
- At the time the Formal Title IX Complaint was submitted, the Complainant was a Student or Employee or was attempting to access or participate in an Education Program or Activity.

14.11.1.2 If any of the foregoing requirements are not met, the Title IX Coordinator must dismiss the Formal Title IX Complaint (although the allegations may continue to be addressed by the College in another form through non-Title IX processes).

#### 14.11.2 Discretionary Dismissal

14.11.2.1 At any time during the Formal Title IX Complaint process, the Title IX Coordinator may dismiss a Formal Title IX Complaint, in whole or in part, if one or more of the following occurs:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant is opting to withdraw the Formal Title IX Complaint or any of the allegations made in it;
- The Respondent is no longer a Student or Employee of the College, or
- Specific circumstances prevent the College from gathering sufficient evidence to make a full and fair determination on the Formal Title IX Complaint or any of the allegations contained in it.

14.10.2.2 If the Complainant ceases to be a Student or Employee of the College while a Formal Title IX Complaint is pending, the Formal Title IX Complaint process will generally continue, provided the Complainant continues to participate

as required. A Formal Title IX Complaint may be dismissed at the discretion of the Title IX Coordinator if a Complainant who is no longer a Student or Employee fails to participate after being given a reasonable opportunity to do so (e.g., participating remotely, extending timelines, etc.).

The Title IX Coordinator may also opt to substitute the Title IX Coordinator or a designee as the Complainant if the Formal Title IX Complaint alleges Title IX Sexual Harassment that could reasonably harm or threaten the general College Community, rather than just the individual original Complainant.

#### 14.11.3 Notice of Dismissal

The Title IX Coordinator will promptly and simultaneously provide written notice of the mandatory or discretionary dismissal of a Formal Title IX Complaint to both parties and include a specific rationale for the dismissal. The notice shall include information about submission and resolution of any applicable appeals.

#### 14.11.4 Mandatory or Discretionary Dismissals – Additional Considerations

14.11.4.1 Complaints or specific allegations that are dismissed as Formal Title IX Complaints for any reason should be referred to other College departments as appropriate for further consideration and/or proceedings in accordance with other College processes (e.g., Employee Handbook or Student Code of Conduct).

14.11.4.2 Complainants who choose to withdraw their Formal Title IX Complaints or any of their Title IX Sexual Harassment allegations may subsequently submit them again as Formal Title IX Complaints or resubmit them in the form of a non-Title IX Complaint (e.g., in accordance with the Employee Handbook or Student Code of Conduct).

14.11.4.3 Decisions by the Title IX Coordinator to dismiss Formal Title IX Complaints may be appealed by either party according to the applicable procedures (e.g., as provided in the Employee Handbook or Student Code of Conduct).

14.11.4.4 The dismissal of a Formal Title IX Complaint for any reason shall not preclude or impair the College's ability to offer, institute, or continue Support Measures for any party.

#### 14.12 Right to a Title IX Advisor

14.12.1 All parties to Title IX Sexual Harassment Complaints may choose to have one Title IX Advisor of their choosing, from inside or outside the College Community, during all stages of the process (e.g., during interviews, meeting, and hearings) provided the parties' chosen advisors are not already involved in the Title IX Sexual Harassment Complaint process (e.g., as a witness) or are not otherwise unwilling or unable to, or prohibited from, participating.

14.12.2 Parties may choose Attorneys to serve as their Title IX Advisors at the parties' own personal expense. Title IX Advisors fulfill the same function and are bound by the same rules, regardless of whether they are Attorneys or non-Attorneys.

14.12.3 Trained Title IX Advisors from the College's Title IX Pool shall be made available to both parties at no cost.

14.12.4 Parties may change their Title IX Advisors at any time and are expected to notify the Title IX Coordinator of any changes at least two (2) Business Days before any scheduled meetings, interviews, or hearings. Regardless of any changes that have occurred, parties may only be accompanied by one Title IX Advisor to a particular meeting, interview, or hearing. Parties generally may not change their selection of Title IX Advisors during a particular meeting, interview, or hearing, absent exceptional circumstances and only with the approval of the Title IX Coordinator (or designee).

#### 14.13 Title IX Advisors' Roles and Responsibilities

14.13.1 All Title IX Advisors, including those selected or appointed from the College's Title IX Pool, have the duty and responsibility, first and foremost, to consider the best interests of, and provide candid advice to, the parties they advise to the best of the Title IX Advisors' abilities within the parameters set by this AP and any accompanying College procedures.

- 14.13.2 Title IX Advisors are expected to be available at scheduled dates and times to attend Title IX Sexual Harassment Complaint proceedings in person as required. Dates and times may be adjusted to accommodate Title IX Advisors, and/or proceedings may be conducted remotely (by telephone or video conference), at the sole discretion of the Title IX Coordinator (or designee) if doing so would not unreasonably delay the proceedings, unfairly prejudice or burden another party, or materially interfere with an applicable right of parties to Confront other parties or witnesses who present evidence against them.
- 14.13.3 Title IX Advisors are required to abide by the College’s rules of civility and decorum and to advise their respective parties without being disruptive. Title IX Advisors may be excluded from any proceeding and/or replaced by the College if they repeatedly violate College policy or cause Substantial Disruptions.
- 14.13.4 Title IX Advisors may not address College officials during meetings, interviews, or hearings with their respective advised parties unless specifically authorized to do so under College policy or invited to speak by the College officials in question.
- 14.13.5 Parties are expected and required to speak for themselves during the Title IX Sexual Harassment Complaint process, including during investigations and hearings. Advisors may not make present evidence or arguments in favor of their advised parties, object to questions, speak on behalf of their advised parties at any time during the Title IX Sexual Harassment Complaint process, except to conduct cross-examination during hearings.
- 14.13.6 Parties are expected and required to communicate with College officials themselves about Title IX Sexual Harassment Complaint proceedings. Requests that College officials communicate with parties through attorneys or their Title IX Advisors will be declined.
- 14.13.7 Parties may consult with their Title IX Advisors as needed during any part of the Title IX Sexual Harassment Complaint process and may request reasonable breaks during any proceedings to consult privately.
- 14.13.8 Parties may share otherwise confidential information and documents with their Title IX Advisors and may request that the College share such information with their Title IX Advisors, or allow them to access



it directly, by completing a FERPA release in accordance with applicable College policy. Title IX Advisors are required to maintain the confidentiality of any information shared with them and may be prohibited from acting as Title IX Advisors or subject to disciplinary action by the College if they fail to do so.

14.13.9 Parties' selected Title IX Advisors may request to meet or otherwise confer with the Title IX Coordinator (or designee) prior to interviews, meetings, and hearings with their respective advised parties for guidance on the College's Title IX Sexual Harassment Complaint process and to clarify the role and responsibilities of Title IX Advisors.

#### 14.14 Appointment of Title IX Advisors to Conduct Cross-Examination During Hearings

14.14.1 Federal Title IX regulations require that cross-examination of parties and witnesses during hearings on Formal Title IX Complaints be conducted only by the parties' Title IX Advisors (see Section 14.16.5.11 of this AP). If a party does not have a Title IX Advisor, the College will appoint a trained Title IX Advisor from the Title IX Pool at no cost to the party for the limited purpose of conducting cross-examination at the hearing. Parties may only reject the College's appointment of a Title IX Advisor if they then provide their own Title IX Advisors to conduct the required cross-examination.

14.14.2 If a party does not select a Title IX Advisor, or if the party's chosen Title IX Advisor refuses to or, in the determination of the Title IX Coordinator, is incapable of conducting minimally adequate cross-examination, the College will appoint a Title IX Advisor from the Title IX Pool for the sole purpose of conducting cross-examination, regardless of the participation of the advised party. In the event that occurs, the affected party may otherwise continue to be advised by the party's chosen Title IX Advisor for all other permissible purposes.

#### 14.15 Informal Resolution of Title IX Complaints

14.15.1 Once submitted, and after all parties have been notified, most Formal Title IX Complaints may be resolved informally, without

conducting additional investigations, holding a hearing, or making a determination of responsibility.

14.15.2 A Formal Title IX Complaint alleging that an Employee engaged in Title IX Sexual Harassment against a Student may not be resolved informally.

14.15.3 Either the Complainant or the Respondent may request at any time (including after commencing the Formal Title IX Complaint process) that a Formal Title IX Complaint be resolved informally, but both parties must agree to do so in writing, and either party may opt at any time to move forward with the Formal Title IX Complaint process.

14.15.4 Attempting to resolve a Formal Title IX Complaint informally is not required before initiating the Formal Title IX Complaint process.

14.15.5 Formal Title IX Complaints may be resolved informally through a variety of approaches, provided the parties both agree to do so, including, but not limited to, one or more of the following:

- College-facilitated mediation by a neutral mediator;
- Mutually agreeable Restorative Justice measures;
- The Respondent accepting responsibility for a violation of College policy (including violations other than Title IX Sexual Harassment) and agreeing to receive a particular Educational Measure or Disciplinary Sanction;
- The provision of mutually agreeable Supporting Measures by the College.

## 14.16 The Formal Title IX Complaint Process

### 14.16.1 Notice of Investigation and Allegations

14.16.1.1 The Title IX Coordinator (or designee) will provide written notice of the Formal Title IX Complaint to the parties prior to commencing any investigatory meetings or interviews.

14.16.1.2 Such notice shall be given sufficiently in advance to allow the parties a reasonable opportunity to gather and review evidence, select and confer with their respective Title IX Advisors, and otherwise prepare for the meetings/interviews.

#### 14.16.2 Resolution Timelines, Deadlines, and Extensions

14.16.2.1 Although there is no specific amount of time by which the Formal Title IX Complaint process must be completed, the College will endeavor to resolve all Formal Title IX Complaints, including any subsequent appeals, within ninety (90) Business Days from the date of submission.

14.16.2.2 Deadlines and other dates set during the Formal Title IX Complaint process may be extended at the discretion of the Title IX Coordinator (or designee) for good cause, including, but not limited to, requests from law enforcement to delay investigations, the unavailability of parties or witnesses, and to accommodate disabilities or health conditions.

14.16.2.3 The Title IX Coordinator (or designee) shall inform the parties in writing of any delays, the reasons for them, and the anticipated date when the process will resume. Supportive Measures shall continue, and additional or modified Supportive Measures may be implemented, during any delays.

14.16.2.4 Proceedings on Formal Title IX Complaints will generally not be delayed or postponed if they are ongoing at the end of an academic term or semester, except for good cause and at the sole discretion of the Title IX Coordinator. If the Respondent is a graduating or transferring Student, a hold may be placed on the Student's degree or official transcripts, and other institutional restrictions may be put in place, until the matter is fully resolved, including any appeal.

#### 14.16.3 Ensuring Impartiality

14.16.3.1 All persons involved in administering the Formal Title IX Complaint process, including, but not limited to, the Title IX Coordinator (and any designees), the Investigators, and all decision-makers must be neutral, objective, and free from any

material conflicts or biases that might unfairly affect the resolution of the Formal Title IX Complaint for one party or the other.

14.16.3.2 Either party may, at any time during the Formal Title IX Complaint process, raise a concern about a perceived material bias or conflict on the part of anyone involved. The Title IX Coordinator (or designee) shall make a timely determination if the concern is reasonable and factually supported, and, if so, assign someone else to fulfill the role of the individual about whom the concern was raised. Concerns about bias or conflict by the Title IX Coordinator should be brought to the attention of the Chancellor (or designee).

#### 14.16.4 Investigations

##### 14.16.4.1 Investigator Training Requirements

All individuals conducting investigations into Formal Title IX Complaints must complete specific training, provided by the College, on the proper methodology for conducting thorough, unbiased investigations in accordance with the requirements of Title IX. This training shall include, but is not limited to, the following topics:

- Title IX and its associated federal regulations;
- This AP and other College policies and procedures related to Discrimination and Harassment;
- Maintaining neutrality and objectivity;
- Avoiding biases, including implicit bias;
- Disparate treatment of Complainants, Respondents, and witnesses and its investigatory implications;
- Reporting, confidentiality, and privacy requirements;
- Conducting investigations in a thorough, reliable, and impartial manner;

- Questioning witnesses neutrally and objectively;
- Generating clear and impartial investigatory reports.

#### 14.16.4.2 Selection of Impartial Investigators

The individuals conducting investigations into Formal Title IX Complaints cannot be the same individuals who will serve as the Title IX Hearing Officers, Title IX Appeal Panelists, and/or decision-makers on those same complaints. Investigators must be adequately trained, neutral, impartial, and unbiased. The selection of Investigators into Formal Title IX Complaints shall otherwise be at the discretion of the Title IX Coordinator and may include Investigators from the College’s Office of Dispute Resolution (“ODR”) or qualified individuals retained or recruited from outside the College.

#### 14.16.4.3 Impartiality During the Investigative Process

Investigators must remain impartial and objective during investigations into Formal Title IX Complaints. All such investigations shall be conducted with the presumption that the Respondent is not responsible for the alleged Title IX Sexual Harassment unless and until proven otherwise by a Preponderance of the Evidence as determined by the designated decision-maker.

Investigators shall not provide any determinations or assessments of the parties’ or witnesses’ respective credibility at any point during the Formal Title IX Complaint process. Likewise, Investigators shall not make or draw any conclusions or inferences regarding whether the evidence gathered supports a finding that a Respondent did or did not violate Title IX (e.g., that an allegation is “substantiated” or “unsubstantiated”).

#### 14.16.4.4 Ensuring Thorough and Fair Investigations

To the maximum extent possible, Investigators into Formal Title IX Complaints shall interview all parties and relevant

witnesses and obtain all potentially relevant evidence that is reasonably available. All parties should have a full, fair, and equal opportunity to 1) identify both fact and expert witnesses and suggest questions for the Investigator to ask those witnesses, 2) provide documents and other evidence to the Investigator, 3) identify sources of expert information, and 4) review and respond to all evidence and to have those responses made part of the investigatory record.

#### 14.16.4.5 Investigation Timelines for Formal Title IX Complaints

Although there is no set deadline, investigations into Formal Title IX Complaints shall be conducted in a timely manner and completed expeditiously, normally within thirty (30) days, not including any applicable time periods required for the parties and their Title IX Advisors to have an opportunity to review and comment on the evidence collected during the investigation. However, the College is primarily concerned that investigations are conducted fairly and thoroughly, and, as such, some investigations may take substantially longer.

#### 14.16.4.6 Cooperation of Parties and Witnesses During Investigations

All parties and witnesses are expected to cooperate fully with investigations into Formal Title IX Complaints unless doing so would require them to violate or waive a Legally Recognized Privilege. All claims of privilege must be referred to and reviewed by the College's General Counsel. Witnesses who are Employees or Students of the College may face disciplinary action in accordance with the requirements of the Employee Handbook, Student Code of Conduct, and other applicable College policies and procedures if they fail to cooperate during a Title IX investigation when required to do so.

#### 14.16.4.7 Party and Witness Interviews

Witness interviews will generally be conducted in person. Witnesses may be interviewed via telephone or other electronic means (e.g., via Zoom, Skype, Google Hangouts, etc.) at the discretion of the Investigator if necessary and

doing so would not materially impair the thoroughness or impartiality of the investigation.

Absent exceptional circumstances, audio recordings will be made of all investigatory interviews.

#### 14.16.4.8 Witness's Written Statements

Witnesses may provide written statements in addition to being interviewed. Witnesses may not provide written statements in lieu of being interviewed. If a witness provides a written statement but is not present or refuses to be cross-examined during the Title IX Hearing, the witness's written statement may not be used as evidence and should be disregarded by the decision-maker.

#### 14.16.4.9 Limitations on Use of Party's Medical Records

Neither the College nor any other party may access or use a party's confidential medical, psychological, or similar treatment records during the investigation or at any other time during the Formal Title IX Complaint process unless the Title IX Coordinator (or designee) has obtained the voluntary, written consent of the party to whom the records belong.

#### 14.16.4.10 Additional Considerations During Investigations

Investigations should not include witness statements or other evidence about 1) incidents that are not related directly to the allegations in the Formal Title IX Complaint, unless those incidents could reasonably provide evidence of a pattern of substantially similar conduct, 2) the purported character or reputation of any party, 3) questions and evidence about the Complainant's prior sexual behavior, unless it is relevant to a question of consent or if someone other than the Respondent is responsible for the alleged violation.

#### 14.16.4.9 Investigative Reports

At the conclusion of the investigation into a Formal Title IX Complaint, the Investigator shall produce a final investigative

report summarizing all relevant evidence, including, but not limited to, a list of all fact and expert witnesses identified by either party and any potentially Inculpatory Evidence and Exculpatory Evidence.

The investigative report shall not contain any inferences drawn from that evidence, conclusions about the responsibility of either party for any allegations, or assessments of the parties' and witnesses' credibility, as those are determinations which must be made only by the decision-maker and only after the conclusion of the Title IX Hearing.

#### 14.16.4.11 Provision of Final Investigative Reports and Relevant Evidence Prior to Hearing

At least ten (10) Business Days prior to the Title IX Hearing, the Investigator shall simultaneously 1) provide copies of the final investigative report to all parties, their Title IX Advisors, and the Title IX Coordinator (and any designee), and 2) provide the parties and their Title IX Advisors with copies of, or otherwise make reasonably available for their inspection and review, all evidence collected during the investigation that is directly related to the allegations in the Formal Title IX Complaint, including any potentially Inculpatory Evidence and Exculpatory Evidence.

#### 14.16.5 Hearings

Although the College endeavors to provide a clear and well-organized process, administered by knowledgeable and impartial personnel, hearings on Formal Title IX Complaints at the College are non-judicial proceedings, and formal rules of evidence and procedure, such as would be following in a court of law, are generally not applicable. Questions about the hearing process may be directed to the Title IX Coordinator.

##### 14.16.5.1 Standard of Proof

The standard of proof for deciding all allegations brought as part of a Formal Title IX Complaint shall be the Preponderance of the Evidence standard.



#### 14.16.5.2 Burden on the College, not the Parties

The College, not any of the parties, has the sole burden and responsibility to determine, through a thorough and impartial process, if any or all of the allegations in a Formal Title IX Complaint have been established by a Preponderance of the Evidence.

#### 14.16.5.3 Scheduling the Hearing

After the parties and their Title IX Advisors have received the final investigative report and had an opportunity to review the evidence directly related to the allegations in the Formal Title IX Complaint, the Title IX Coordinator will schedule the matter for a hearing.

Hearings cannot be scheduled for less than ten (10) Business Days after either the date when the final investigative report was provided to the parties or when the evidence was made available to the parties and their Title IX Advisors (whichever date is later), unless all parties and the Title IX Coordinator agree in writing to expedite the hearing schedule.

#### 14.16.5.4 Notice of the Hearing

Not less than ten (10) Business Days prior to the scheduled date of the hearing, the Title IX Coordinator shall send notice to the parties containing the following:

- A description of all alleged violations that will be considered at the hearing and their potential disciplinary consequences, with citations to their corresponding provisions in College policy and/or procedure;
- A description and/or copy of (or link to) the procedures that will be followed during the hearing;
- The time, date, and location (including virtual location, if applicable) of the hearing, and a statement that attendance is mandatory;

- The name and title of the designated Title IX Hearing Officer who will conduct the hearing and act as decision-maker, along with instruction on how to object to the designated hearing officer, acceptable bases for such objections (e.g., conflicts, biases), and the deadline for submitting any such objections.
- Any technology that will be used to facilitate the hearing;
- A list of expected hearing attendees;
- A notice that the hearing will be recorded and information on how parties will be provided access to the recording after the hearing;
- A statement that, if any party or witness does not appear at the scheduled hearing, it will continue as scheduled without them (absent compelling reasons for their absence that the Title IX Hearing Officer determines warrants a discretionary rescheduling of the hearing), and the statements or testimony of any parties or witnesses who do not attend the hearing will not be considered by the Title IX Hearing Officer in reaching a decision;
- Notice that the parties may each have a Title IX Advisor of their choosing present at the hearing and must have a Title IX Advisor, either of their choosing or provided by the College, to conduct cross-examination questioning on their behalf;
- Copies of all evidentiary materials provided to the Title IX Hearing Officer or a list of those materials if they were provided to the parties previously;
- Instructions on how to request disability accommodations, if needed;
- Any other instructions or directives relevant to the administration of the hearing.

#### 14.16.5.5 Hearing Officers

For each hearing on a Formal Title IX Complaint, the Title IX Coordinator shall designate a single member of the Title IX Pool to serve as the Title IX Hearing Officer. The Title IX Hearing Officer shall conduct the hearing, make discretionary decisions during the hearing about the relevance of evidence offered and questions asked (including during cross-examination), and serve as the finder-of-fact and decision-maker.

#### 14.16.5.6 Evidentiary Considerations During Hearings

Title IX Hearing Officers may generally consider any evidence they believe to be relevant and credible in reaching their decisions. The Title IX Hearing Officer shall make all determinations as to the relevance of all evidence and the credibility of the statements and testimony provided by all parties and witnesses.

Title IX Hearing Officers may not consider the following as evidence at the hearing:

- Incidents not directly related to the allegations in the Formal Title IX Complaint, unless they reasonably evidence a pattern of substantially similar conduct;
- The purported character or reputation of any party;
- The Complainant's prior sexual behavior unless offered to show that someone other than the Respondent committed the conduct alleged in the Formal Title IX Complaint or that the alleged conduct was consensual.

#### 14.16.5.7 Virtual Hearings and Remote Testimony

The College will generally hold in-person hearings when it is reasonably feasible to do so, but all or part of any hearing may be conducted virtually at the discretion of the Title IX Coordinator (or designee). The College will make arrangements to utilize technology to allow live testimony to be conducted remotely without compromising fairness or

impairing either party's right to Confront witnesses directly and in real time.

#### 14.16.5.8 Hearing Participants and Attendees

Participants at the hearing will include the Title IX Hearing Officer, the parties and their respective Title IX Advisors, the Investigator(s) who conducted the investigation, and any witnesses who will give testimony and answer questions.

At the discretion of the designated Title IX Hearing Officer, a hearing may also be attended by a limited number of non-participating attendees, including, but not limit to, the Title IX Coordinator (or designee), Deputy Title IX Coordinator(s), and/or the College's General Counsel (to advise on procedural matters), as well as additional members of the Title IX Pool (for observation and training purposes).

#### 14.16.5.9 Concurrent Hearings

In the event a single Formal Title IX Complaint involves allegations against more than one Respondent, the general practice of the College shall be to conduct separate hearings, typically scheduled consecutively (*i.e.*, one immediately after the other) for each Respondent.

At the discretion of the Title IX Coordinator, and with the written consent of all parties, hearings may be conducted concurrently (*i.e.*, at the same time) to jointly resolve allegations against more than one Respondent to the same Formal Title IX Complaint, if doing so would not unfairly prejudice either Respondent and would materially benefit the parties and/or witnesses (*e.g.*, by avoiding having to testify multiple times).

#### 14.16.5.10 Testimony and Direct Questioning of Parties and Witnesses

The Title IX Hearing Officer shall afford each party an equal opportunity to present evidence for consideration during the hearing, including testimony from any fact or expert witnesses. Title IX Hearing Officers may call upon parties,

witnesses, and other individuals involved in the process (e.g., the Title IX Investigators) to testify in the order the Title IX Hearing Officers wish to hear from them, provided all parties have an equal opportunity to present evidence, including any Aggravating Factors or Mitigating Factors.

Parties and witnesses may give testimony in the form of statements to the Title IX Hearing Officer, and the Title IX Hearing Officer may ask the testifying parties and witnesses questions about those statements and any other matters the Title IX Hearing Officer believes to be relevant. Neither the opposing parties nor their Title IX Advisors may ask questions or offer arguments or objections at this time.

When a party or a particular party's witness has finished testifying, and the Title IX Hearing Officer has finished asking the party or witness questions, the Title IX Hearing Officer shall offer the opposing party's Title IX Advisor the opportunity to conduct cross-examination questioning of the testifying party or witness.

If the testifying witness is the Investigator, both parties' Title IX Advisors shall have an equal opportunity to conduct cross-examination.

#### 14.16.5.11 Cross-Examination by Title IX Advisors

Only parties' Title IX Advisors may ask testifying parties and witnesses (including Investigators) cross-examination questions. Cross-examination is generally limited to the scope of 1) the specific statements given by the party or witness being cross-examined (i.e., what that party or witness personally said, either during the live hearing or in other statements, such as to an Investigator), 2) statements attributed to the party or witness being cross-examined that are contained in the allegations of the Formal Title IX Complaint (regardless of whether the party or witness testified at the hearing or spoke to Investigators at any time about those purported statements), or 3) if the party being cross-examined is the Complainant, any allegation made in the Formal Title IX Complaint. Title IX Hearing Officers may, at

their discretion, allow additional cross-examination if they determine that it is 1) not done solely to embarrass or harass the party or witness, 2) reasonably likely to lead to relevant information and, 3) not likely to cause unnecessary delay or disruption

Title IX Hearing Officers shall not allow any cross-examination to continue that is irrelevant, repetitive, unnecessarily argumentative, or harassing. Title IX Advisors who engage in such conduct should be warned and subsequently removed from the proceeding if they refused to abide by the Title IX Hearing Officer's directives.

#### 14.16.5.12 Failure or Refusal to Answer Cross-Examination – Use of Statements

If a party or witness does not attend the hearing or refuses to answer any cross-examination questions during the hearing, the Title IX Hearing Officer may not rely upon any prior statements made by that party or witness in reaching a decision, including, but not limited to, statements contained in the final investigative report or attributed to that party or witness in the Formal Title IX Complaint's allegations.

If the party or witness attends the hearing and refuses to answer some cross-examination questions, the Title IX Hearing Officer may not rely upon any prior statements by the party or witness related to the unanswered questions.

Exception: A party's statements that are themselves the central issue in a specific Title IX Sexual Harassment allegation (e.g., verbal harassment or Quid Pro Quo offers) may be considered by the Title IX Hearing Officer in reaching a decision, even if the party does not attend the hearing or refuses to answer cross-examination statements about such statements.

#### 14.16.5.13 Failure or Refusal to Answer Cross-Examination – Inferences Drawn

Title IX Hearing Officers may not infer that a Respondent is either more likely or less likely to be responsible for an alleged Title IX Sexual Harassment violation based solely on any party or witness failing to attend the hearing or to answer cross-examination questions.

If additional violations other than Title IX Sexual Harassment (e.g., forms of Sexual Harassment that violate College policy or Title VII but not Title IX) are among the alleged violations at issue in a hearing Title IX Hearing Officers may draw reasonable inferences from any decision by a party or witness not to attend the hearing or answer cross-examination about those additional, non-Title IX violations only.

#### 14.16.5.14 Recordings and Transcripts of Hearings

All hearings on Formal Title IX Complaints shall be recorded by the College and made available for inspection and review upon request to all parties and their Title IX Advisors, as well as to College Employees involved in the Title IX process and the administration and implementation of this AP, for inspection and review. Recordings must be reviewed in a controlled environment. Copies shall not be made, released, or distributed except internally at the College for purposes consistent with this AP (e.g., for training purposes).

Hearing recordings may be transcribed at the discretion of the Title IX Coordinator and made available for inspection and review in a controlled environment under the same conditions and subject to the same restrictions as recordings.

#### 14.16.5.15 Closing Statements and Hearing Adjournment

Before concluding the hearing, the Title IX Hearing Officer shall confirm that all parties have presented all evidence and arguments that they believe the Title IX Hearing Officer should consider in making a decision. If necessary, the Title IX Hearing Officer may infer a party's confirmation if the party refuses to answer or merely repeats evidence or arguments previously stated.

The Title IX Hearing Officer may also offer each party an opportunity to make a concluding statement (which may include or reiterate any Aggravating Factors or Mitigating Factors the party believes should be considered) and to suggest what decision(s) they believe the Title IX Hearing Officer should make and what, if any, Educational Measures and/or Disciplinary Sanctions should be issued.

The Title IX Hearing Officer shall conclude the hearing by informing the hearing attendees that the matter will be taken under advisement and a decision will be issued in writing. The Title IX Hearing Officer shall not issue a decision during the hearing.

#### 14.16.6 Educational Measures and Disciplinary Sanctions

The Title IX Hearing Officer may impose any available Educational Measure or Disciplinary Sanction applicable to the party in question under College policy or procedure, including, but not limited, those specified in the Employee Handbook and Student Code of Conduct.

#### 14.16.7 Written Decisions

14.16.7.1 Following the hearing, the Title IX Hearing Officer will issue a timely written decision according to timeframes and processes established by the Title IX Coordinator.

14.16.7.2 Decisions are ultimately at the sole discretion of the individual Title IX Hearing Officers making them. In considering their decisions, Title IX Hearing Officers may confer confidentially with the Title IX Coordinator (or designee), the College's General Counsel, and other College Employees involved in the implementation and administration of this AP and the College's overall compliance with Title IX, as well as with other members of the Title IX Pool. If, after concluding the hearing, the Title IX Hearing Officer determines it is necessary to confer again with the Investigator (e.g., to clarify information in the final investigative report), the Title IX Hearing Officer shall make a note of that conference and the reason for it in the written decision.



14.16.7.3 Written decisions shall include specific findings of fact and determination of responsibility on all allegations in the Formal Title IX Complaint based on the Preponderance of the Evidence standard. Decisions must clearly state the specific evidence relied upon in reaching a determination on each alleged violation, as well as the Title IX Hearing Officer's rationale for issuing the specified (or for not issuing any) Educational Measures and/or Disciplinary Sanction.

14.16.7.4 Written decisions shall also include information about the availability of any appeals of the Title IX Hearing Officer's decision and the process for submitting them, including, but not limited to, applicable submission deadlines.

#### 14.16.8 Notice and Delivery of Decisions

The Title IX Hearing Officer shall deliver the written decision to the Title IX Coordinator (or designee) in accordance with the College's established timelines and procedures. The Title IX Coordinator shall distribute the written decision to all parties and their Title IX Advisors, along with a notice informing the parties about the availability of any appeals and the processes for submitting them, including, but not limited, applicable submission deadlines.

#### 14.17 Imposition of Educational Measures and Disciplinary Sanctions

Educational Measures and Disciplinary Sanctions will be imposed in accordance with the College policies and procedures applicable to the affected party, including, but not limited to, the Employee Handbook and the Student Code of Conduct.

#### 14.18 Appeals of Title IX Decisions

Appeals of certain Title IX decisions may be submitted, and acceptable appeals will be considered and decided in a timely manner, as described below.

##### 14.18.1 Who May Appeal

Any party to a Formal Title IX Complaint (i.e., a Complainant or Respondent) may submit an appeal of an appealable issue on an

appealable basis (see Section 14.18.2 and Section 14.18.4). Parties may likewise submit cross-appeals, including cross-appeals about the same issues (e.g., the Respondent may appeal a sanction on the basis it is too harsh, and the Complainant may appeal the same sanction on the basis that it is too lenient).

## 14.18.2 What May Be Appealed

14.18.2.1 The following may be appealed pursuant to the Title IX appeal processes stated below in this section of this AP:

- Decisions by the Title IX Coordinator to dismiss a Formal Title IX Complaint pursuant to Section 14.10 of this AP;
- Decisions by the Title IX Hearing Officer on allegations of Title IX Sexual Harassment, including, but not limited to, decisions about responsibility for the violation(s) alleged, whether or not to impose Educational Measures and/or Disciplinary Sanction, and the specific types or degrees of Educational Measures and/or Disciplinary Sanctions imposed (e.g., if they were too harsh or too lenient).

14.18.2.2 All other decisions, including decisions by the Title IX Hearing Officer on alleged violations of this AP that do not constitute Title IX Sexual Harassment, must be appealed separately according to the policies and procedures applicable to the party appealing the decision (e.g., the Employee Handbook, the Student Code of Conduct) or the specific form of Discrimination or Harassment alleged (e.g., the College's disability-discrimination AP).

## 14.18.3 Submitting an Appeal

Appeals shall be submitted to the Title IX Coordinator or (designee) within five (5) Business Days of the appealing party's receipt of the Title IX Hearing Officer's written decision. Appeals must state an acceptable basis for appeal (see Section 14.18.4 of

this AP) and be supported by specific factual information and/or College policy arguments. Appeals will not be considered if they are submitted 1) without specific factual support and/or policy arguments, or 2) solely with conclusory or speculative allegations or arguments not based on College policy.

Please contact the Title IX Coordinator's Office or see the Title IX Coordinator's page on the College's website for additional submission instructions and processes.

#### 14.18.4 Acceptable Bases for Appeal

Appeals are limited to and must be based on one or more of the following acceptable bases:

- A Material Error in Process occurred that affected or reasonably could have affected an appealable decision to the detriment of the Appellant;
- The discovery of new relevant evidence that was not reasonably available at the time an appealable decision was made that reasonably could have affected that decision in favor of the Appellant had it been presented;
- Bias or a material conflict of interest on the part of the Title IX Coordinator, Investigator, Title IX Advisor, or Title IX Hearing Officer that affected or reasonably could have affected an appealable decision to the detriment of the Appellee;
- The decision being appealed was Clearly Erroneous in light of all information known at the time it was made.

#### 14.18.5 Status of Educational Measures and Disciplinary Sanctions While an Appeal Is Pending

Educational Measures or Disciplinary Sanctions imposed by the Title IX Hearing Officer that are the subject of an appeal are generally stayed (*i.e.*, their imposition is postponed temporarily) while the appeal is pending, unless specifically decided otherwise by the Title IX Coordinator. Supportive Measures may be continued, reinstated,

or modified at the discretion of the Title IX Coordinator, pending resolution of the appeal.

#### 14.18.6 Notice of Appeal to All Parties

The Title IX Coordinator (or designee) shall notify all parties in writing of the appeal and provide them with copies of the appeal document along with information regarding their rights in the appeal process, including, but not limited to, their right to respond in writing to the appeal and the process for doing so.

#### 14.18.7 Appellee Responses to Appeals

Appellees shall have a reasonable opportunity to provide written responses to Appellants' appeals. Written responses should be delivered to the Title IX Coordinator or designee, who will provide copies to Appellants.

#### 14.18.8 Designating the Title IX Appeal Panel

The Title IX Coordinator (or designee) shall designate a Title IX Appeal Panel consisting of three (3) individuals selected from the Title IX Pool.

#### 14.18.9 Title IX Appeal Panel Processes

14.18.9.1 Title IX Appeal Panel decisions will generally be made without conducting a live hearing and will be based on the written submissions of parties and the information already in the evidentiary record.

14.18.9.2 Title IX Appeal Panels may submit additional written questions to Appellants and Appellees to be answered in writing.

#### 14.18.10 Discretionary Title IX Appeal Hearings

14.18.10.1 Any party may request a live appeal hearing before the Title IX Appeal Panel. Requests for a live appeal hearing must be clearly stated in the party's appeal and delivered to the Title IX Coordinator, who will forward

copies of the request (along with the appeal) to the Title IX Appeal Panel and to all parties. Opposing parties shall have an opportunity to file written responses indicating why they believe the request for a live hearing should be denied.

14.18.10.2 The decisions whether to grant such a request and conduct a live appeal hearings shall be at the sole discretion of the Title IX Appeal Panel and is not subject to review. Requests shall be granted only in exceptional circumstances. The party requesting the hearing has the burden of demonstrating that a live hearing is necessary for the requesting party to receive a full and fair opportunity to be heard. The Title IX Appeal Panel will inform the Title IX Coordinator in writing of its decision on the request, and the Title IX Coordinator will notify all parties of the decision.

14.18.10.3 If an appeal hearing is held, the Title IX Appeal Panel shall offer Appellants and Appellees an equal opportunity to be heard.

14.18.10.4 Both Appellants and Appellees may be accompanied by their respective Title IX Advisors. Appeal hearings may also be attended by the Title IX Coordinator (or designee) and the College's General Counsel to advise the Title IX Hearing Panel on procedural matters as needed.

14.18.10.5 An appeal hearing is not a new evidentiary hearing, and further witness testimony or other additional evidence will generally not be heard or considered unless it is necessary to demonstrate the existence of new evidence that 1) could not reasonably have been discovered at the time of the hearing before the Title IX Hearing Officer, and 2) is substantially likely to have affected the Title IX Hearing Officer's decision, had it been available at the time. If new testimonial evidence is offered at the appeal hearing, limited additional cross-examination may be conducted by the parties' Title IX Advisors.

14.18.10.6 No decisions shall be issued during the appeal hearing. At the conclusion of the hearing, the Title IX Appeal Panel shall inform the parties that it will take the matter under advisement and issue a written decision at a later time.

14.18.11 Title IX Appeal Decisions

14.18.11.1 Title IX Appeal Panels shall meet privately to deliberate and reach a decision, either after 1) the time to request an appeal hearing has expired, 2) all requests for hearings have been denied, or 3) a discretionary appeal hearing has been completed. No parties may attend the deliberation meetings. Meetings may be attended by the Title IX Coordinator (or designee) and/or the College's legal counsel to advise on procedure matters as needed. If the decision being appealed was made by the Title IX Coordinator or a designee, the Title IX Coordinator or the designee who made the decision under review generally should not attend the meeting.

14.18.11.2 Title IX Appeal Panels should give a great deal of deference to Title IX Hearing Officers' and Title IX Coordinator's decisions and only change or overturn a decision if a majority of the Title IX Appeal Panel is firmly convinced that the decision was in error, even if the individual panelists themselves might have reached a different conclusion.

14.18.11.3 When deciding appeals, Title IX Appeal Panels may 1) deny the appeal and affirm the decisions, 2) affirm the decision that a violation occurred but reduce or increase the Educational Measure or Disciplinary Sanction, or 3) grant the appeal in its entirety and remand the matter to the decision-maker for further proceedings and/or a new decision (consistent with the Title IX Appeal Panel's findings).

14.18.11.4 Title IX Appeal Panels decisions must be in writing and provide sufficient detail to reasonably inform the

parties and the Title IX Coordinator of the bases for the decisions.

#### 14.18.12 Finality of Title IX Appeal Panel Decisions

Decisions of Title IX Appeals Panels are final, and no further review of the appealed decisions shall be available unless specifically stated otherwise in applicable College policies or procedures (e.g., for termination or expulsion proceedings pursuant to the Employee Handbook or Student Code of Conduct, respectively).

#### 14.18.13 Notice of Title IX Appeal Panel Decisions

The Title IX Appeal Panel shall provide its written decision to the Title IX Coordinator who shall in turn provide copies of the decision to the parties and the Title IX Hearing Officer (if applicable). The Title IX Coordinator shall include with the decision a notice informing the parties of any right they may have under other applicable College policies or procedures (e.g., the Employee Handbook or Student Code of Conduct) to request review of the Title IX Appeal Panel's decision (e.g., for a final review of a termination or expulsion decision, if available).

#### 14.19 Withdrawal or Resignation of Respondent While a Formal Title IX Complaint Is Pending (Including During Appeal)

In addition to the provisions of Section 14.10 above (dismissals), the following considerations are applicable in the event of the withdrawal of a Student Respondent or Resignation of an Employee Respondent while a Formal Title IX Complaint is pending against them:

##### 14.19.1 Withdrawal of a Student Respondent

If a Student Respondent withdraws from or otherwise ceases to be enrolled at the College while a Formal Title IX Complaint is pending, the Student will not be permitted to re-enroll at the College. The College may place a hold on the Student's account, prohibit the Student from being on College Property or attending or participating in College Sponsored Events, and/or restrict the Student's ability to receive a degree or certificate, participate in the College's graduation ceremony, and/or access official transcripts.

#### 14.19.2 Resignation of an Employee Respondent

If an Employee Respondent resigns from or otherwise ceases to be enrolled at the College while a Formal Title IX Complaint is pending, the Employee will not be eligible for rehire for any position with the College. Records retained by the respective offices of the Title IX Coordinator and the Chief Human Resources will reflect the Employee's ineligible status. The College may also prohibit the Employee from being on College Property or attending or participating in College Sponsored Activities, including, but not limited to, being enrolled as a Student.

### **SECTION 15: Recordkeeping**

15.1 The College shall maintain all records of proceedings undertaken pursuant to this AP in accordance with the College's record-retention policies and applicable state and federal laws.

15.2 The College shall maintain a centralized electronic database of all documentation associated with alleged violations of this AP, including, but not limited to, reports and Complaints, evidentiary documentation (incl. any audio or video recordings), investigatory reports, and written decisions.

15.3 The Chancellor designates the College's Office of the General Counsel with the primary responsibility of establishing, maintaining, and overseeing the utilization of the required database in conjunction with all College departments tasked with administering any processes under this AP (e.g., the Office of Dispute Resolution ("ODR", Human Resources ("HR"), the Office of the Dean of Students, the Access and Disabilities Resources Office).

### **SECTION 16: Glossary of Definitions**

"ADA" means the Americans With Disabilities Act of 1990 and the Americans With Disabilities Act Amendments Act ("ADAAA") of 2008 and their accompanying federal regulations.

"ADR" means the College's Office of Access and Disability Resources.

"Adverse Action" means any actions or decisions by the College that have a materially negative effect on the terms and conditions of an Employee's



employment, a Student's enrollment, or another member of the College Community's ability to access the College's Education Programs and Activities.

"Advisor" means an individual assisting or supporting a Complainant or Respondent during a Complaint or appeal proceeding, including, but not limited to, another Student, an Employee; a parent, sibling, or other relative; or a religious or spiritual leader. Advisors may not be Attorneys unless specifically permitted by the applicable Complaint procedure (e.g., the Employee Handbook, the Student Code of Conduct, or this AP).

"Aggravating Factor" means any evidence or information that might warrant addressing alleged Discriminatory or Harassing conduct as a more serious violation of this AP or justify imposing a particular (or harsher) Disciplinary Sanction for a particular violation, including, but not limited to, a history of prior violations by the Respondent, the degree of damage or caused by Respondent's misconduct (including physical and emotional damage to the Complainant or another member of the College Community), whether the misconduct was planned or spontaneous (i.e., "a crime of passion"), whether the misconduct demonstrates callous disregard or disrespect for others or the College, and whether the Respondent demonstrates a lack of remorse or refuses to accept personal responsibility for the misconduct.

"Anonymous" or "Anonymously" means a person making a report or Complaint about, or providing information during the course of an investigation into, alleged Discrimination or Harassment in violation of this AP does so without disclosing to the College that person's own identity, and the College is otherwise unaware of who made the report or Complaint or provided the information in question.

"AP" means Administrative Procedure.

"Appellant" means a Complainant or Respondent appealing a decision of and/or Responsive Action issued by a decision-maker in accordance with this AP and/or other applicable College policies and procedures (e.g. the Employee Handbook and the Student Code of Conduct).

"Appellee" means a decision-maker, Respondent, and/or Complainant responding to an Appellant's appeal of a decision-maker's decision or other matter designated as appealable under this AP or other applicable College policies and procedures (e.g., the Employee Handbook and the Student Code of Conduct).

"BP" means Board Policy.

“Attorney” means a legal professional licensed to practice law in the State of Arizona or another legal jurisdiction within the United States, including U.S. territories and federally recognized Indian/Native American Tribes and in good standing with that jurisdiction’s bar who Actively Assists a Student during a Code Resolution Meeting or appeal hearing.

“Bullying” means a sustained course of conduct involving physical assault, threats of physical assault, harassment, ridicule, or deliberate and gratuitous intimidation of a kind and/or duration which no Reasonable Person could be expected to endure under the circumstances, the purpose or effect of which is to exert dominance over and/or humiliate another member of the College Community.

“Business Day” means between 8:00 a.m. and 5:00 p.m. on a day when the College conducts Ordinary College Operations, excluding Saturdays and Sundays, any officially recognized College holidays, and any other day the College is officially closed for any reason.

“Chief Human Resources Officer” means the College’s highest-level non-academic administrator with specific authority over the College’s human-resources, employee-relations, and employee-services operations of the College, regardless of that individual’s title, generally acting under the administrative authority of the College’s Executive Vice Chancellor for Finance and Administration.

“Clearly Erroneous” means not supported by competent evidence or reasonable inferences, or constituting such a departure from established College processes and procedure, such that no Reasonable Person could have reached the same decision in light of all of the information at the time.

“Clery Act” means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (20 U.S.C. § 1092).

“College Community” means, collectively, all persons employed by, volunteering for, enrolled in classes at, or visiting the College or attending any College Sponsored Activity.

“College Property” means any College Campus, building, or grounds owned, leased, operated, or controlled by the College, as well as any structures, improvements, or equipment thereon.

“College Sponsored Activity” means any event, activity, or endeavor officially approved by the College, on- or off-campus College Property.

“College IT Systems” means all College-owned or -controlled telephones, computers, software, network devices, servers, printers, and other College-owned or -controlled technology equipment, including both hardware and software, as well as the College’s website “pima.edu,” any email with a pima.edu domain name, and/or any information stored or transmitted on College servers.

“Complainant” means an individual who brings a Complaint alleging to have been subjected to or adversely affected by Discrimination or Harassment in violation of this AP.

“Complaint” means an allegation that a member of the College Community has engaged in Discrimination or Harassment in violation of this AP.

“Confidential” or “Confidentiality” means the College or a particular College Employee involved in the administration of this AP is aware of the identity of a party making a report or Complaint of Discrimination or, or of the identity of a witness participating in the investigation into or resolution of such a report or Complaint, but the College or Employee does not disclose or otherwise reveal the identity of the party or witness unless required to do so by law or in order to protect the College Community.

“Confront” means to oppose directly and contemporaneously, generally in person and face to face, but, at a minimum, in a manner in which one can hear and view the testimony of others against oneself as it is being given.

“Counter-Complaint” means a Complaint submitted by a Respondent against a Complainant, after the Respondent has been notified of, or in response to, the original Complaint, typically about the same alleged incidents and general factual allegations.

“Dating Violence” means violence or other physical, psychological, or emotional abuse directed against an individual by someone with whom that individual is or has been in a social, romantic, or intimate relationship including, but not limited to, acts committed intentionally to frighten, intimidate, coerce, exploit (including economic exploitation), or humiliate the targeted individual or socially isolate them from others.

“Deliberate Indifference” or “Deliberately Indifferent” means responsive action that a Reasonable Person would find is clearly unreasonable considering the circumstances known or reasonably discoverable at the time.

“Discipline,” “Disciplinary,” or “Disciplinary Sanction” means a punitive consequence to a Respondent as a result of either a) the Respondent admitting to and accepting responsibility for a violation of this AP, or 2) a decision reached pursuant to applicable College processes (including, but not limited to, the Employee Handbook and the Student Code of Conduct) that the Respondent engaged in a violation of this AP.

“Discrimination” or “Discriminatory” means any adverse treatment based on a person’s actual or perceived membership in one or more Protected Classes with respect to the terms, conditions, and privileges of education, employment, or access to other Educational Programs and Activities at the College.

“Domestic Violence” means violence or other physical, psychological, or emotional abuse directed against an individual by someone with whom that individual currently has or previously had a cohabitational relationship of any kind, including, but not limited to, as a spouse, intimate partner, roommate, or family member, including, but not limited to, acts committed intentionally to frighten, intimidate, coerce, exploit (including economically), or humiliate the targeted individual or socially isolate them from others.

“Education Programs and Activities” means all academic and non-academic Ordinary College Operations, including employment opportunities at the College and the College’s employment practices.

“Educational Measure” means any non-punitive, non-Disciplinary consequence of a violation of this AP applicable under any College policy or procedure, including, but not limited to, the Employee Handbook and the Student Code of Conduct. Educational Measures are generally focused on corrective actions and Restorative Justice, and intended to help responsible individuals make amends to those affected by their actions, learn from the experience, and better understand the College’s expectations for them as members of the College Community. The imposition of Educational Measures is generally not appealable unless specified otherwise in applicable College policies or procedures.

“Employee” means any person employed by the College on a full-time, part-time, temporary, or regular basis or directly engaged in the performance of work under

the provision of a contract with the College. This definition does not include unpaid Volunteers.

“Employee Handbook” means the College’s published set of employment practices, procedures, and expectations, generally applicable to all academic and non-academic Employees.

“Exculpatory Evidence” is evidence that is favorable to the Respondent, including, but not limited to, evidence that shows or tends to show that the Respondent, more likely than not, did not engage in the specific conduct alleged or otherwise violate this AP.

“Formal Title IX Complaint” means a document signed (either handwritten or electronically) and submitted by either an appropriate identified Complainant (i.e., a Student, Employee, or individual attempting to access the College’s Education Programs and Activities) or the Title IX Coordinator alleging Title IX Sexual Harassment in violation of this AP. A Formal Title IX Complaint is required to initiate the Title IX Complaint Process.

“Frivolous” or “Frivolously” means lacking any discernible basis in fact or policy.

“Harassment” or “Harassing” means unwelcome conduct in any form directed toward, or differential treatment of, a member of the College Community on the basis of membership or perceived membership in a Protected Class or on any other prohibited basis, including, but not limited to, conduct in any form or on any basis that creates or contributes to a Hostile Environment. Such conduct may include, but is not limited to, objectively offensive or degrading remarks or jokes, verbal abuse, use of racial slurs or derogatory comments, displays of objectively offensive symbols or imagery, physical assault, Bullying, Hazing, and Stalking.

“Hazing” means the imposition of dangerous, unnecessarily strenuous, or humiliating tasks or conditions as a part of acceptance or initiation into, or membership in, a group or program, whether undertaken voluntarily or involuntarily, that no Reasonable Person could be expected to endure under the circumstances.

“Hostile Environment” means an educational environment or workplace in which Discrimination or Harassment is 1) severe and/or pervasive, 2) objectively offensive, and 3) has the purpose or effect of unreasonably interfering with, limits, or effectively denies a Student, Employee, or other member of the College Community’s Employee’s academic performance or educational opportunities.

work performance or employment opportunities, access to or ability to benefit from the College’s other Education Programs and Activities.

“Inculpatory Evidence” is evidence that shows or tends to show a Respondent more likely than not engaged in the specified alleged conduct in violation of this AP.

“Investigator” means a College Employee or a third-party retained by the College to investigate and gather evidence related to an alleged Code of Conduct violation.

“Knowing” or “Knowingly” means done in a way that a Reasonable Person would believe shows forethought, deliberate action, or an intention for an outcome to occur.

“Legally Recognized Privilege” means a right recognized under Arizona or applicable federal law that allows a party or witness to decline to testify or otherwise cooperate, or to prevent another individual from testifying or cooperating, during the Formal Title IX Complaint process, including, but not limited to spousal/marital privilege, attorney-client privilege, clergy-penitent privilege, and the doctor-patient privilege.

“Malicious” or “Maliciously” means intended merely to harass, intimidate, embarrass, or retaliate against a member of the College Community, to interfere with or disrupt Ordinary College Operations, or to delay a Code of Conduct proceeding.

“Material Error in Process” means a significant mistake or omission in administration of a College process that a Reasonable Person could find affected or likely could have affected the final outcome of a Complaint proceeding or otherwise made the proceeding fundamentally unfair.

“Matter of Substantial College Interest” means any event, action, or incident that does or is reasonably likely to 1) pose an immediate threat to the health and safety of the College Community; 2) constitute a criminal offense as defined by local, state, or federal law (even if no arrest or conviction has been made); 3) damage the reputation or educational mission of the College.

“Mitigating Factor” means any information or evidence that might warrant addressing alleged Discrimination or Harassment as a less serious violation of this AP or justify issuing a lesser (or no) Disciplinary Sanction, including, but not limited to, whether the Respondent admits to or accepts personal responsibility for

the violation, the Respondent’s lack of prior violations, the subjective impact of the Respondent’s conduct on the Complainant and/or other members of the College Community, the Respondent’s personal circumstances that might help explain but not excuse the misconduct (e.g., severe stress or provocation), and whether the Respondent demonstrates genuine regret or remorse.

“Negligently” means done in a way that demonstrates a failure to act with the level of care that a Reasonable Person would exercise under the same circumstances.

“Ordinary College Operations” means all day-to-day business and other functions of the College, including, but not limited to, academic instruction and other Education Programs and Activities, administrative services, performance of employment responsibilities, facilities maintenance and grounds-keeping, creative activity, community events, community and public relations, campus safety and security, and the maintenance of a College-wide environment and reputation and that is open, accessible, and welcoming to the College Community.

“Preponderance of the Evidence” means the decision-maker must determine that, based on the available relevant and credible information, it is more likely than not (i.e., there is a greater than 50% chance) a Respondent engaged in the conduct alleged in a Complaint in violation of the applicable College policy.

“Protected Activity” means good-faith actions undertaken pursuant to the provisions of this AP, including, but not limited to, reporting Discrimination or Harassment, submitting or responding to a Complaint, participating in investigatory proceedings (e.g., as a witness), supporting or acting as an Advisor to Complainant or Respondent, or administering Complaint proceedings.

“Protected Class” means a group of individuals with a common characteristic (e.g., race, religion, national origin, age, sex or gender, disability status, etc.) who are legally protected from Discrimination and Harassment on the basis of that characteristic.

“Provost” means the College’s chief academic officer or highest academic administrator, following the Chancellor.

“Quid Pro Quo” (lit. “something for something”) means a form of Sexual Harassment that involves a College Employee the conditioning a College benefit or service (e.g., grades or other academic outcomes, financial assistance, employment opportunities, decisions in College proceedings) on acquiescence to or tolerance of unwelcome sexual activity.

“Reasonable Person” means a hypothetical adult person with average sensibilities and an ordinary degree of intelligence, common sense, emotional maturity, prudence, care, and foresight.

“Reckless” or “Recklessly” means done in a way that a Reasonable Person would find unjustifiably impulsive, exceedingly careless, or totally unreasonable under the circumstances.

“Resignation” means an Employee’s voluntary cessation of employment with the College for any reason, including retirement.

“Respondent” means the individual who is alleged in a Complaint to have engaged in prohibited Discrimination or Harassment in violation of this AP.

“Restorative Justice” means any method of addressing and correcting Code of Conduct violations that provides an alternative to traditional punishments by focusing on accepting personal responsibility, making amends to individuals or institutions who have been harmed, and developing a stronger sense of one’s identity and role as a member of the College Community.

“Retaliation” means a form of unlawful discrimination in which materially adverse action is taken to punish an individual for engaging in Protected Activity or for the purpose of interfering with the individual’s exercise of any right or privilege pursuant to law or College policy. Such adverse action may include, but is not limited to threats; acts of intimidation or coercion; unfavorable employment or academic decisions, or other forms of Discrimination and Harassment.

“Section 504” means Section 504 of the Rehabilitation Act of 1973.

“Sexual Assault” means physical sexual acts perpetrated against an individual, regardless of any current or prior relationship, either through physical force or coercion, including threats against the individual or others, against the individual’s will, without the individual’s consent, or where the individual is incapable of giving consent, including, but not limited to, rape (forcible or statutory), sexual violence, sexual battery, sexual abuse, sexual exploitation, and sexual coercion.

“Sexual Harassment” means unwelcome conduct of a sexual nature, of any kind or duration, that a Reasonable Person would find objectively offensive, including, but not limited to, unwelcome sexual advances or requests to engage



in sexual activity of any kind, unreasonably persistent requests to socialize when the recipient of the requests has said no or otherwise declined the requests; or comments (including jokes and innuendo), conduct (including gestures), or physical contact (including unwanted touching) of a sexual nature.

“Stalking” means repeatedly following, making contact with, observing, or engaging in other conduct, or directing or requesting that others engage in such conduct, against another individual without legal justification in a manner or under circumstances that would cause a Reasonable Person to feel threatened, unsafe, or intimidated or to fear for the safety of others.

“Student” means any person who applies for admission to or is currently registered for or enrolled in any course(s) at the College on either a full-time, part-time, or clock-hour basis, as well as any person currently registered for or participating in continuing education, workforce development, adult basic education, or developmental education classes through the College.

“Student Code of Conduct” means the College’s published set of non-academic expectations and requirements for Students’ behavior that includes the College’s procedures, practices, and remedies for addressing Student non-academic misconduct.

“Subordinate” means any Employee whose hiring or consideration for employment; duties, responsibilities, or work assignments; or terms and conditions of employment with the College are determined, supervised, directed, controlled, evaluated, or overseen directly by a Supervisor.

“Substantial Disruption” means one or more unauthorized acts or conditions that materially and significantly interfere with, interrupt, or impede the instructional or educational activities of the College, other College Sponsored Activities, College Authorized Activities, Education Programs and Activities, or Ordinary College Operations.

“Supervisor” means an Employee who directly hires, supervises, oversees, gives direction or work assignments to, or evaluates the performance of one or more Subordinate Employees, or who has administrative authority over one or more Subordinates or the Subordinates’ specific terms and conditions of employment with the College.

“Supportive Measures” means non-disciplinary, non-punitive, individualized services of any duration offered free of charge to members of the College

Community affected by or accused of Discrimination or Harassment as reasonably necessary and appropriate to restore or preserve access to the College’s Education Programs and Activities, preserve the integrity of the College’s investigation, and/or protect the safety of the parties involved. Supportive Measures may be requested by both Complainants and Respondents, and the College may implement Supportive Measures at its own discretion.

“Title IX” means the federal civil rights law prohibiting discrimination on the basis of sex in federally funded education programs and activities (see 20 U.S.C. § 1681, et seq.).

“Title IX Advisor” means an Advisor assisting a Complainant or Respondent during the Formal Title IX Complaint process, including, but not limited to during any hearings. Title IX Advisors may be attorneys, provided at the Complainant or Respondent’s own expense.

“Title IX Sexual Harassment” means conduct meeting the College’s definition of Sexual Harassment that occurs in the United States during a College Education Program or Activity and includes one or more of the following additional elements specifically prohibited by Title IX: a) Quid-Pro-Quo Harassment, b) Sexual Assault, c) Dating Violence, d) Domestic Violence, e) Stalking, or f) other unwelcome conduct of a sexual nature that a Reasonable Person would find to be so severe and pervasive and objectively offensive (all three must be present) that it effectively denies the affected individual of equal access to the College’s Education Programs and Activities.

“Title VII” means Title VII of the Civil Rights Act of 1964, a federal law that protects Employees against Discrimination and Harassment based on their Protected Class.

“Volunteer” means any individual who is not an Employee or Student of the College and is authorized by the College to perform and voluntarily performs services for the College without promise, expectation, or receipt of compensation, future employment, or other tangible benefit, including academic credit. A Volunteer is not an Employee of the College for any purpose.

~~AP Title: \_\_\_\_\_~~ **Procedure for Complaints of Discrimination, Harassment and Retaliation**

~~AP Number: \_\_\_\_\_~~ AP 5.10.03

~~Adoption Date: \_\_\_\_\_~~ 9/7/94

~~Schedule for Review & Update: \_\_\_\_\_~~ Every three years

~~Review Date(s): \_\_\_\_\_~~ 8/4/99, 10/11/07, 12/12/12, 10/1/13

~~Revision Date(s): \_\_\_\_\_~~ 9/28/99, 10/11/07, 12/12/12, 10/1/13

~~Sponsoring Unit/Department: \_\_\_\_\_~~ Human Resources

~~Policy Title(s) & No(s): \_\_\_\_\_~~ Equal Employment Opportunity, ADA, Non-Discrimination and Anti-Harassment (including Sexual Harassment), BP 5.10

~~Legal Reference: \_\_\_\_\_~~ Title VI & VII of the 1964 Civil Rights Act; Title IX of the Education Amendments of 1972; Executive Order 11246; Age Discrimination in Employment Act of 1975; Rehabilitation Act of 1973, Sections 503 & 504; Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA); Americans with Disabilities Act of 1990 as amended; Equal Pay Act of 1963; Arizona Civil Rights Act of 1965

~~Cross Reference: \_\_\_\_\_~~

**PURPOSE**

The purpose of this Administrative Procedure (AP) is to implement Board Policy 5.10 (BP 5.10), which prohibits discrimination, harassment and retaliation, as these terms are defined below.

The College will take prompt and appropriate action to thoroughly investigate a complaint that BP 5.10 or this AP have been violated, to correct any discrimination harassment or retaliation that is determined to have occurred, and, if necessary, to discipline any individual who is found to have engaged in conduct that constitutes discrimination, harassment or retaliation.

## ~~SECTION 1: Definitions and Concepts~~

### ~~1.1—Discrimination~~

~~Discrimination occurs when an individual is treated adversely based on a protected classification. Protected classifications are race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity or other legally protected category. The failure to provide reasonable religious or disability accommodations when required by law, College policy, or College AP also constitutes discrimination.~~

~~The College is committed to protecting the full and frank exchange of ideas. Discrimination does not include the use of materials about or discussion of race, color, religion, sex, national origin, or other protected classifications for scholarly purposes appropriate to the academic context, such as class discussions or meetings.~~

### ~~1.2—Harassment~~

~~Harassment is a specific form of discrimination. Harassment is unwelcome behavior based on a protected classification that:~~

- ~~• has the purpose or effect of creating an intimidating, hostile, or offensive employment or educational environment or~~
- ~~• has the purpose or effect of unreasonably interfering with an employee's work performance, an individual's employment opportunities, a student's academic performance, or a student's ability to receive the benefits of a College program or activity.~~

~~Prohibited harassment may take the form of, but is not limited to, offensive slurs, jokes, and other offensive or abusive oral, written, computer-generated, visual or physical conduct that is aimed at, or that adversely impacts, an employee or student because of his or her inclusion in a protected classification. It may also include negative stereotyping, including negative references about a person's language or accent.~~

~~The most common type of harassment is sexual harassment. Sexual harassment is a form of sex discrimination and may involve individuals of the same sex or different sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:~~

- ~~submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or a student's status;~~
- ~~submission to or rejection of such conduct by an individual is used as the basis for employment decisions, or academic decisions affecting the individual; or~~
- ~~such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, a student's academic performance, or a student's ability to receive the benefits of a College program or activity or has the purpose or effect of creating an intimidating, hostile or offensive work or academic environment. This may include:~~
  - ~~unwelcome sexual touching, advances or propositions;~~
  - ~~lewd comments, sexual jokes and offensive personal references;~~
  - ~~leering, demeaning, insulting, intimidating or sexually suggestive comments about an individual's dress or body;~~
  - ~~the display in the workplace of demeaning, insulting, intimidating or sexually suggestive objects or pictures including nude photographs;~~
  - ~~demeaning, insulting, intimidating or sexually suggestive written records or electronically transmitted images;~~
  - ~~unwelcome touching~~

~~Sexual harassment does not include conduct of a socially acceptable nature. Nor does it refer to the use of materials or discussion related to sex and/or gender for scholarly purposes appropriate to the academic context, such as class discussions or meetings.~~

~~In determining whether the conduct at issue is sufficient to be harassment in violation of BP 5.10 or this AP, the conduct will be analyzed from the objective standpoint of a "reasonable person." No violation of BP 5.10 or this AP will be found if the conduct would not create a hostile or offensive environment when judged from the context of a reasonable person facing similar circumstances.~~

### ~~1.3—Retaliation~~

~~Retaliation occurs when adverse action is taken against an employee or student as a result of the employee's or student's good faith participation in a protected activity. Retaliation becomes a separate complaint that can be claimed even if the original discrimination complaint was not substantiated. Retaliation can involve any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits and any other term or condition of employment.~~

~~Protected activities include (a) raising or reporting or filing allegations of~~

~~discrimination, harassment or retaliation and/or (b) participating in any review or investigation of a claim of discrimination, harassment or retaliation.~~

~~Adverse action is any action that (a) materially affects an individual's terms and conditions of employment or a student's academic status, or (b) is reasonably likely to deter that individual or others from engaging in a protected activity.~~

#### ~~1.4—Complainant and Respondent~~

~~“Complainant” is the person making the complaint that he or she is the subject of discrimination. “Respondent” is the person whose alleged conduct is the subject of concern under this AP.~~

#### ~~1.5—Student~~

~~“Student” means a person who is either (a) admitted to the College as a student or (b) registered or participating in College continuing education classes.~~

#### ~~1.6—Employee~~

~~“Employee” includes a College employee as well as a person who has filed an application for employment with the College.~~

#### ~~1.7—Contractor~~

~~“Contractor” An agent or other non-employee of the College who is working on College-related business, including but not limited to: custodial workers, contracted consultant, food service personnel, bookstore staff.~~

#### ~~1.8—Due Process~~

~~For the complainant, due process means having a reasonable opportunity to tell his or her version of events. For the respondent, due process means receiving reasonable notice of allegations and a reasonable opportunity to tell his or her version of events.~~

### ~~SECTION 2: Discrimination, Harassment and Retaliation are Prohibited~~

~~The College prohibits discrimination, harassment and retaliation as set out in BP 5.10 and this AP. This prohibition against engaging in discriminatory conduct applies to College employees, students, contractors, vendors and other agents of~~

~~the College, and to anyone participating in a College-sponsored program or activity.~~

~~Conduct that constitutes discrimination, harassment, or retaliation may result in a written warning or directive and/or discipline, including, but not limited to, possible termination of employment, suspension or expulsion of a student, or exclusion of an individual from a College program or activity. Nonemployees may be directed to discontinue the discriminatory conduct and are subject to such other consequences as are appropriate for the circumstances.~~

### ~~**SECTION 3: Duty to Create an Environment Free of Discrimination, Harassment and Retaliation**~~

~~All members of the College community are responsible for participating in the creation of an educational and/or work environment that is free from discrimination, harassment and retaliation.~~

### ~~**SECTION 4: Duty of Administrators, Supervisors and Instructors to Report Possible Discrimination, Harassment and Retaliation**~~

~~Employees of the College who (a) are administrators, (b) supervise employees, students, contractors, vendors or other agents of the College, or (c) instruct or advise students are required to immediately report possible discrimination, harassment or retaliation to the EEO/AA & ADA Office or the Vice President of Student Affairs as appropriate. See Section 5 below.~~

~~The duty to report arises whenever one of the above-designated employees (a) witnesses possible discrimination, harassment or retaliation or (b) is provided with written or verbal notice or otherwise learns of possible discrimination, harassment or retaliation.~~

### ~~**SECTION 5: Filing a Complaint of Discrimination, Harassment or Retaliation**~~

~~If an employee or student believes that he or she has been the victim of discrimination, harassment, or retaliation, he or she is encouraged to promptly report or file a complaint about the incident as detailed below.~~

~~College employees shall cooperate with an authorized investigation and act in accordance with the Code of Conduct as contained in the Personnel Policy statements.~~

### 5.1—~~Report or Complaint against Student~~

~~If the person alleged to have violated BP 5.10 and this AP is a student, the report or complaint should be made and investigated by the appropriate Vice President of Student Affairs. The College's Student Code of Conduct (including timelines) applies in these situations. If such a report or complaint is made to the EEO/AA & ADA Office, it shall be transferred to the appropriate Vice President of Student Affairs. During the investigation of a report or complaint made against a student, the Vice President of Student Affairs shall consult with the EEO/AA & ADA Officer and the College's Title IX Coordinator, as appropriate.~~

### 5.2.—~~Report or Complaint against the Chancellor, an Executive Administrator, the EEO/AA & ADA Officer, or the Title IX Coordinator~~

#### 5.2.a—~~Report or Complaint against the Chancellor~~

~~If the person alleged to have violated BP 5.10 and this AP is the Chancellor, the complaint shall be reported to the Chair of the Governing Board or the College's Attorney, who shall inform each other. The Board Chair and the College's Attorney shall inform the other members of the Governing Board. The investigation of the facts concerning an alleged violation by the Chancellor shall be conducted by an independent, third party reviewer who shall report the results to the Governing Board and the College's Attorney.~~

#### 5.2.b—~~Report or Complaint against an Executive Administrator~~

~~If the person alleged to have violated BP 5.10 and this AP is an Executive Administrator, the complaint shall be reported to the head of the Human Resources Department, the Compliance and Ethics Hotline, or the College's Attorney, who shall inform the Chancellor.~~

#### 5.2.c—~~Report or Complaint against the EEO/AA & ADA Officer or the Title IX Coordinator~~

~~If the person alleged to have violated BP 5.10 and this AP is the EEO/AA & ADA Officer or the Title IX Coordinator, the report or complaint shall be reported to the head of the Human Resources Department.~~

### 5.3—~~Student Report or Complaint of Disability Discrimination~~



~~A student who wishes to make a report or complaint of disability discrimination shall do so using the procedures (and timelines) set out in AP 3.46.06.~~

#### ~~5.4—Report of Complaint Against a Contractor~~

~~If the person alleged to have violated BP 5.10 and this AP is a Contractor engaged by the College, the report or complaint will be made to and investigated by the Executive Vice Chancellor for Finance and Administration.~~

#### ~~5.5—All Other Reports or Complaints~~

~~In all cases other than those set out in subsections 5.1 through 5.3 above, a report or complaint of discrimination, harassment or retaliation shall be made or referred to the College's EEO/AA & ADA Office.~~

#### ~~5.6—Time for Making Report or Complaint~~

~~To be considered timely, a report or complaint must be made or filed within 90 calendar days of the alleged incident of discrimination, harassment, or retaliation. If the alleged discrimination, harassment or retaliation is of an ongoing nature, the report or complaint must be filed within 90 calendar days of the most recent incident.~~

~~Reports or complaints received by the College that are outside of the 90 calendar day timeline may, at the discretion of the EEO/AA & ADA Officer and Chief Human Resources Officer, (a) be investigated in the same manner as if a timely report or complaint had been made or filed, (b) be reviewed, but in a different manner than would have occurred had the report or complaint been timely, or (c) not be processed further. In addition, recommendations and/or remedies resulting from an investigation may differ based on whether a report or complaint was timely.~~

#### ~~5.7—Contacting the College's EEO/AA & ADA Officer and Title IX Coordinator~~

~~The College's EEO/AA & ADA Officer may be contacted via e-mail, telephone or in person at:~~

~~EEO/AA & ADA Officer  
Building C, Room 241  
Pima Community College District Offices  
4905 E. Broadway Blvd~~

~~Tucson, AZ 85709-1310  
(520) 206-4539~~

~~The College's Title IX Coordinator may be contacted via email, telephone or in person at:~~

~~Title IX Coordinator  
Building B, Room 204  
Pima Community College District Offices  
4905 E. Broadway Blvd  
Tucson, AZ 85709-1100  
(520) 206-4973~~

## **~~SECTION 6: Investigation of Reports or Complaints of Discrimination, Harassment or Retaliation by the College's EEO/AA & ADA Office~~**

### ~~6.1—Assignment of an EEO/AA & ADA Investigator and Prompt Investigation~~

~~In cases investigated by the EEO/AA & ADA Office, the EEO/AA & ADA Officer shall conduct an investigation or assign an EEO/AA & ADA Investigator to conduct an investigation into any timely filed written report or complaint of discrimination, harassment or retaliation. Subject to the approval of the Chief Human Resources Officer, the EEO/AA & ADA Officer may also investigate any verbal, informal timely report or complaint of discrimination, harassment or retaliation.~~

~~Investigations will be completed promptly, generally within 45 to 60 calendar days of receipt of the report or complaint to allow time for due process. If the investigation cannot be concluded in the 45 to 60 calendar day timeframe, the Complainant, Respondent and appropriate Administrator(s) will be kept informed of the status of the investigation and anticipated date of conclusion.~~

### ~~6.2—Course of Investigation~~

~~Investigations shall be conducted in a manner that provides the complainant and respondent due process. Any investigation may include the EEO/AA & ADA Investigator meeting and interviewing the Complainant and the Respondent, interviewing and/or consulting with other persons, reviewing pertinent documents, and/or making any other appropriate inquiries. Subject to the approval of the Chief Human Resources Officer, an EEO/AA & ADA Investigator may require the Complainant and Respondent to both submit an affidavit under oath that the factual~~

~~statements made in the affidavit are true and correct.~~

~~No adverse determination will be made against a Respondent prior to the Respondent being informed about the allegations contained within the report or complaint and having the opportunity to respond to those allegations.~~

~~At the commencement of, or at any time during the course of an investigation, interim measures may be imposed in order to protect all parties until the investigation is completed, including, but not limited to, the EEO/AA & ADA Investigator issuing a temporary directive to a Respondent or other person relating to conduct that may constitute discrimination, harassment or retaliation. In addition, the Chief Human Resources Officer may impose on a Respondent or other person a Paid Investigatory Leave as referenced by the Personnel Policy Statement for College Employees.~~

### ~~6.3—Cooperation of all Employees~~

~~Employees, as a condition of employment, and students, as a condition of continuing student status, are required to cooperate with, and provide truthful information to, the College during an investigation of a complaint alleging discrimination, harassment, or retaliation.~~

~~Time spent participating in a College investigation at the request of the Human Resources Department which includes the EEO/AA & ADA Office is work time.~~

### ~~6.4—Support~~

~~At any interview or meeting held as part of an investigation, the Complainant and Respondent may be accompanied by a person of their choice who is not an attorney. The person accompanying either the Complainant or the Respondent will be allowed to be present during the interview or meeting but may not actively participate in any manner in the interview or meeting. If the individual is a College employee, time spent accompanying either the Complaint or Respondent shall be considered time worked.~~

### ~~6.5—Confidentiality~~

~~Every reasonable effort will be made to protect the privacy and confidentiality of all parties involved in the investigation, consistent with and subject to the College's need to investigate the report or complaint and/or implement decisions made in order to resolve the report or complaint or remedy conduct that is~~

~~determined to constitute discrimination, harassment or retaliation. No representative of the College is authorized to promise complete confidentiality to any person who possesses information relevant to the investigation of a report or complaint, including the Complainant.~~

~~Documentation resulting from any investigation shall be maintained as confidential in the EEO/AA & ADA Office. Access to documents or any other kind of information related to a complaint is permitted only for College officials with a “need to know” or as allowed or required by law.~~

#### ~~6.6—Good Faith Allegations~~

~~No adverse action will be taken against an individual who makes a good faith allegation of discrimination, harassment, or retaliation, even if an investigation fails to substantiate the allegation.~~

#### ~~6.7—Withdrawal of a Report or Complaint~~

~~A Complainant may withdraw a report or complaint at any time. The College, however, has the discretion to continue an investigation and take appropriate remedial action regardless of such withdrawal.~~

### ~~SECTION 7: Findings, Recommendations, Disciplinary and Corrective Action~~

~~At the close of an investigation, the EEO/AA & ADA Office may make one of the following determinations, and related recommendations concerning each allegation of discrimination, harassment, or retaliation:~~

- ~~● Unable to confirm that the Respondent violated BP 5.10 and this AP. (In some cases, the determination may be that the Respondent did not violate BP 5.10 and this AP.) In such a case, the recommendations shall include a recommendation that the matter be closed.~~
- ~~● Unable to confirm that the Respondent violated BP 5.10 and this AP (or a violation did not occur), but Respondent’s conduct may have violated another College policy or AP. In such a case, the EEO/AA & ADA Investigator shall refer the matter to the employee’s administrative supervisor and/or Employee Relations for further review. The EEO/AA & ADA Investigator may also make recommendations concerning possible action to remedy the matter and/or recommendations to prevent possible retaliation in the future.~~

- ~~The Respondent violated BP 5.10 and this AP. The EEO/AA & ADA Investigator shall (a) refer the matter to the employee's administrative supervisor and Employee Relations for further action, and (b) make recommendations concerning possible action to remedy the violation or violations that were found to have occurred and make recommendations to prevent possible retaliation in the future.~~
- ~~If the Respondent is a visitor, vendor, or volunteer and the EEO/AA & ADA Investigator finds that the Respondent violated this BP 5.10 and this AP, the EEO/AA & ADA Investigator may make recommendations to the appropriate administrator/supervisor and, if applicable, Employee Relations concerning possible action to remedy the matter.~~

~~A Respondent who has been found to have engaged in conduct that involves discrimination, harassment, or retaliation may be subject to written warnings or directives and/or disciplinary action, up to and including termination of employment for a Respondent who is an employee and/or suspension or expulsion of a Respondent who is a student. The Respondent may also be required to participate in training and/or counseling.~~

~~Disciplinary action may be taken against any person who knowingly files a false claim of discrimination, harassment, or retaliation, who knowingly provides false testimony during an investigation, or who intentionally interferes with an investigation.~~

### ~~SECTION 8: Appeal~~

~~Either or both the Complainant and/or the Respondent have the right to appeal to the EEO/AA & ADA Officer a decision of the EEO/AA & ADA Investigator. The appeal must be in writing, must be filed within ten (10) calendar days of the issuance of the EEO/AA & ADA Investigator's decision, and must include all supporting materials and arguments that the person bringing the appeal believes support the appeal. Decisions not appealed within such time are deemed final.~~

~~The EEO/AA & ADA Officer will conduct any additional fact-finding the EEO/AA & ADA Officer deems necessary and shall issue a written decision on the appeal, providing a copy to all parties involved. Normally this decision will be made within thirty (30) calendar days from the date the appeal was received, but this time period may be extended in appropriate circumstances. The written decision of the EEO/AA & ADA Officer shall be final.~~

~~If the EEO/AA & ADA Officer participated in a significant fashion in the original~~

~~investigation, the appeal shall be handled by the Chief Human Resources Officer.~~

~~If the investigator is the Chief Human Resources Officer, any appeal shall be handled by the Chancellor or designee.~~

### ~~SECTION 9: Right to Make Complaints to Outside Agency~~

~~In addition to use of the College's internal procedures referenced by this AP, College employees and students have the right to file claims of discrimination, harassment, or retaliation with outside agencies. At the time this AP was adopted, the timeframe for filing a charge with the Arizona Civil Rights Division was 180 days from the last act of discrimination, harassment or retaliation. The timeframe for filing a charge with the Equal Employment Opportunity Commission was 300 calendar days from the last act of discrimination, harassment or retaliation. These time frames for filing a charge with the ACRD and EEO generally will not be extended while the Complainant attempts to resolve a dispute through the College's internal grievance procedure. A Complainant should verify these timeframes with the applicable agency.~~

~~External agencies include:~~

~~United States Department of Education  
Office for Civil Rights (OCR)  
1244 Speer Blvd., Suite 310  
Denver, Colorado 80204-3582  
Phone: (303) 844-5695  
Fax: (303) 844-4303  
Email: OCR.Denver@ed.gov~~

~~The Office of the Arizona Attorney General  
Civil Rights Division (ACRD)  
402 W. Congress Street, Suite S215  
Tucson, Arizona 85701-1367  
Phone: (520) 628-6500  
TDD: (520) 628-6872~~

~~The United States Equal Employment Opportunity Commission  
(EEO/AA/ADAC)  
3300 N. Central Avenue, Suite 690  
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