

**Title IX Sexual Harassment
Policy and Procedures**

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Table of Contents

I. Philosophy, Purpose, and Scope..... 1

II. Definitions for the Purpose of this Policy and Procedures 1

III. Responsible Senior Leader and Responsible Office 6

IV. Entities Affected by this Policy and Procedures 6

V. Training, Education, and Prevention 6

VI. Confidentiality 8

VII. General Response to Sexual Harassment Reports 8

VIII. Grievance Process..... 12

IX. Retaliation 21

X. Compliance with Grants and Work-sharing Agreements..... 22

XI. Resources Available..... 22

XII. Related Policies and Procedures 24

Procedures in this document were revised to be in accordance with the regulations issued by the U.S. Department of Education effective August 14, 2020.

To report a claim of Sexual Harassment, please contact:

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Title IX Sexual Harassment Policy and Procedures

I. Philosophy, Purpose, and Scope

Frederick Community College (“FCC” or the “College”) has a responsibility to establish and maintain a learning and working environment that is free from sexual misconduct, discrimination, and harassment, and that respects and protects the dignity and value of every member of the College community.

This Title IX Sexual Harassment Policy and Procedures has been established for the purpose of ensuring education, prevention, reporting, and response to Title IX sexual harassment. This Policy and Procedures supersedes and replaces any existing policies or procedures related to sexual harassment published in any other College documents.

This Policy and Procedures applies to all members of the College community. Sexual harassment can be committed by a person of any sex or gender identification, and it can occur between people of the same or different sex or gender identification.

This Policy and Procedures applies to sexual harassment in College education programs and activities, which include:

- Locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs;
- on College premises, in any College facility, or on College property;
- at any College-sponsored, recognized or approved program, visit, or activity, regardless of location within the United States of America;
- any building owned or controlled by a student organization that is officially recognized by the College;
- and that impedes equal access to any College education program or activity, that adversely impacts the education or employment of a member of the College community, and that otherwise threatens the health and/or safety of a member of the College community, as further discussed herein.

Title IX sexual harassment is a form of sexual discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act, and is strictly prohibited by FCC.

FCC is required by the Clery Act to keep and disclose information about reportable crime on and near FCC premises, in any College facility, or on College property.

II. Definitions for the Purpose of this Policy and Procedures

- A. “**Clery Act**” refers to the federal law that requires public and private higher education institutions participating in federal student aid programs to disclose college safety information and to impose basic requirements for handling incidents of sexual violence and emergency situations.

Title IX Sexual Harassment Policy and Procedures

- B. **“College community”** refers to trustees, students, and all employees of the College as well as any independent contractors or other third parties to the extent articulated under contractual agreements.
- C. **“Consent”** refers to a knowing, voluntary and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make a rational, reasonable judgment can give consent. Consent may be expressed either by words and/or actions, as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity. It is the responsibility of the person who wants to engage in sexual activity to ensure that they have consent from the other party, and that the other party is capable of providing consent.
- Lack of protest or resistance is not consent. Silence, in and of itself, cannot be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding.
 - Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.
 - Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity.
 - Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
 - Consent cannot be obtained by use of physical force, threats, intimidating behavior, or coercion.
- D. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- E. **“Education program or activity”** includes locations, events, or circumstances over which the College exhibits substantial control over both the respondent and the context in which the sexual harassment occurred.
- F. **“Formal complaint”** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment. Formal complaints may be filed with the Title IX Coordinator by mail or by electronic mail. A “document filed by a complainant” means a document or electronic submission (such as electronic mail) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Although third parties may not file formal complaints, the Title IX Coordinator may sign a formal complaint based upon a third-party complaint or based upon an informal complaint by a complainant. A formal complaint signed by the Title IX Coordinator does not make the Title IX Coordinator a party in the grievance process

Title IX Sexual Harassment Policy and Procedures

described below. The Title IX Coordinator may sign a formal complaint over a complainant's objections in order to ensure that the College does not respond with deliberate indifference to sex discrimination, including sexual harassment, in its programs and activities.

- G. **“Notification” or “written notice”** refers to written hard copy delivered by US certified mail, restricted delivery, or overnight carrier signature required, delivery confirmed, or by College email with “delivery receipt” requested.
- H. An **“Official with Authority (OWA)”** means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of the College. Notice to any OWA conveys actual knowledge to the institution and triggers an obligation to act in a manner that is not deliberately indifferent, which means that the College must respond to sexual harassment allegations in a manner that is not clearly unreasonable in light of the known circumstances. Actual knowledge occurs when notice of alleged sexual harassment reaches either a school's Title IX Coordinator or a person with “authority to institute corrective measures” on behalf of the school, referred to as an “official with authority.” OWAs include Title IX Coordinators, President, Provost, Vice President, Associate Vice President/Dean, Executive Director/Director, Security, and Director of Athletics.
- I. **“Preponderance of the evidence”** refers to evidence that is of greater weight or more convincing than the evidence to the contrary; evidence which shows that something is more likely than not to be true or 50.1% likely to have occurred.
- J. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- K. **“Mandatory reporter”** is a responsible employee which refers to all College trustees and all full and part-time employees of the College, including but not limited to administrators, supervisors, faculty, adjunct faculty, support staff, safety and security staff, coaches, or trainers. Mandatory reporters are those who have the responsibility or duty to report sexual harassment, or whom a student could reasonably believe has such responsibility or duty.
- L. **“Secured College tracking system”** refers to the official College system used to record and track reports of student violations of prohibited conduct and concerning behavior. The secured College tracking system contains documentation of reported violations, interventions, resolutions, and appeals. The Title IX Coordinator is responsible for the oversight and management of reported Title IX sexual harassment violations in the secured College tracking system.
- M. **“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:
 - a. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College education program or activity; or c. “Sexual assault” as

Title IX Sexual Harassment Policy and Procedures

defined in 20 U.S.C. § 1092(f)(6)(A)(v),¹ “dating violence” as defined in 34 U.S.C. § 12291(a)(10),² “domestic violence” as defined in 34 U.S.C. § 12291(a)(8),³ or “stalking” as defined in 34 U.S.C. § 12291(a)(30).⁴

- N. **“Student”** refers to an individual who is registered at the College, either full or part-time, in a credit or continuing education class or classes who has either paid or made arrangement for payment of tuition and/or fees at the time of the alleged incident.
- O. **“Supportive measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or

¹ **“Sexual assault”** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and includes the following:

- Sex Offenses, Forcible – Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
 - Forcible Rape – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - Forcible Sodomy – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - Sexual Assault with an Object – To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - Forcible Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sex Offenses, Nonforcible – Nonforcible sexual intercourse.
 - Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Maryland law.
 - Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent in Maryland.

² **“Dating Violence”** means violence committed by a person – a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

³ **“Domestic Violence”** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

⁴ **“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

Title IX Sexual Harassment Policy and Procedures

preserve equal access to the College education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of schools or other buildings operated by the College, and other similar measures. The College will maintain as confidential any supportive measures provided to complainants and respondents, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- P. **“Title IX Coordinator”** refers to the individual designated by the President of the College to: 1) oversee the College response to sexual harassment reports and complaints, and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) coordinate, conduct, and/or delegate sexual harassment investigations; 3) oversee, review content, and, in collaboration with other College offices, develop the training plan, and conduct training for all mandatory reporters on sexual harassment issues; 4) ensure that appropriate policies and procedures are in place for responding to complaints of sexual harassment against faculty, staff, and students; 5) work with local law enforcement to ensure coordinated responses to sexual harassment cases; and 6) maintain accurate documentation and logs related to the Maryland Higher Education Commission reports.

The Title IX Coordinator is responsible for receiving all reports of sexual harassment and maintaining all records related to Title IX sexual misconduct. Sexual harassment records for students are maintained in the secured College tracking system. Sexual harassment records for employees are maintained by the Title IX Coordinator in the Human Resources Office.

The Title IX Coordinator who has been designated by the President is:

Eugene Smith, Title IX Coordinator
Frederick Community College
Student Center, Office H103A
7932 Opossumtown Pike
Frederick, MD 21702
esmith@frederick.edu
Office: (301) 624-2707

If necessary, the President will designate an alternate individual who is qualified to serve as Title IX Coordinator.

- Q. **“Title IX Hearing Panel”** refers to a group of three College staff members convened by the Title IX Coordinator to serve as a live hearing panel for the grievance process for resolving formal complaints of sexual harassment. Members of the Title IX Hearing Panel will be free from conflict of interest and bias and trained to serve impartially as set forth in this Policy and Procedure prior to presiding over a live hearing. The Title IX Coordinator will be responsible for convening three College

Title IX Sexual Harassment Policy and Procedures

staff members to serve on the Title IX Hearing Panel during the formal grievance process with sufficient time in advance of the live hearing for the members of the Title IX Hearing Panel to complete any required training and for alternates to be secured, if necessary.

- R. **“Workdays”** refers to Monday through Friday and does not include weekends, holidays, scheduled breaks, or other days the College is closed.

III. Responsible Senior Leader and Responsible Office

Vice President for Human Resources

Human Resources

Vice President for Learning Support

Learning Support

IV. Entities Affected by this Policy and Procedures

The College community

V. Training, Education, and Prevention

FCC is committed to educating the College community regarding the prevention and elimination of sexual harassment. Creating an environment free from sexual harassment is the responsibility of all members of the College community. The College is committed to fostering a climate in its education programs and activities that is free from sexual harassment through training, education, and prevention programs, and through policies and procedures that promote prompt reporting, prohibit retaliation, and promote timely, fair, and impartial investigation and resolution of sexual harassment cases.

- A. Preventing sexual harassment begins with effective training. All employees will have completed Title IX training by November 30 of each year or within three weeks of their hire date and are required to update their training every year. Additional mandatory trainings are arranged by the Title IX Coordinator/Vice President for Human Resources for all faculty and staff who serve as Title IX Hearing Panel Members or individuals who may assist in Title IX investigations in accordance with Title IX regulations.
- B. The name, office address, and phone number of the Title IX Coordinator(s) is posted on bulletin boards throughout the College, on the College website, and in College publications, including the Student Handbook.
- C. To ensure that students understand their rights and responsibilities under Title IX, the College provides awareness, knowledge and skill-building workshops, and events organized by the Center for Student Engagement. Specific education on alcohol and drug abuse, sexual assault, and dating violence is provided. These events are offered in a variety of formats throughout the year and are posted on the Co-Curricular

Title IX Sexual Harassment Policy and Procedures

Calendar. These events include, but are not limited to:

- National Collegiate Drug and Alcohol Awareness Month Programming occurs each October and provides information, workshops, films, and social events designed to help students understand high-risk behaviors and how to make wise choices.
 - National Health and Wellness Month Programs run throughout March and April and include experts from local agencies sharing health and safety tips including sexual assault prevention and education and bystander intervention and training.
 - The Center for Student Engagement offers monthly events independently or cosponsored by College clubs and organizations that feature speakers addressing topics such as sexual assault, anti-bias, and sexual harassment as part of co-curricular programming.
 - Sexual Assault Awareness Month occurs each April. The College offers a series of workshops and events such as Bystander Training.
 - College committees and workgroups lead or participate in the development of ongoing New Student Orientation, Convocation, and other student programs.
 - Tabletop information fairs are offered that direct students to College resources and services.
 - Title IX brochures are available and posted for students describing College and community resources, confidential services, and support for students who deal with sexual abuse and violence.
 - Clery Act data is posted on our website in the [Annual Safety and Security Report](#), which is updated in October of each year.
 - A [dedicated webpage](#) with resource information and relevant links is available on the College website.
 - The College offers online Title IX training for all students through Safe Colleges.com. Certificates of completion are issued to those who successfully complete the training.
- D. The Title IX Coordinator for Students is responsible for the development of the Student Training/Education/Prevention plan (in coordination with other College offices) and oversight of education, training, and prevention programs on Title IX sexual harassment for students.
- E. The Title IX Coordinator for Staff is responsible for the development of the Training/Education/Prevention plan (in coordination with other College offices) and oversight of education, training, and prevention programs on Title IX sexual harassment for employees, including safety and security staff. In compliance with Title II of the Crime Awareness and Campus Security Act of 1990, the College provides information related to crime statistics and security measures to current students and employees, and to any applicant and registrant for enrollment or applicant for employment upon request. Crime statistics are available on the College website at <http://www.frederick.edu/faculty-staff/campus-security.aspx>.

Title IX Sexual Harassment Policy and Procedures

VI. Confidentiality

The College recognizes the importance of confidentiality. All reasonable efforts will be made to ensure the confidentiality of information received to protect the complainant, respondent, and the College community.

If a person requests that their name not be disclosed or that the College not investigate or take action related to a report of sexual harassment, the Title IX Coordinator will determine whether or not such a request can be honored while still providing a safe and nondiscriminatory environment for all students, faculty, and staff.

Confidentiality does not apply to minors (under the age of 18). State mandatory reporting laws require mandatory reporters to report child neglect and abuse that is suspected, observed, or in some cases, learned about through a third party, to the local department of social services or to a local law enforcement agency.

VII. General Response to Sexual Harassment Reports

A. Reporting

1. All members of the College community should promptly report sexual harassment in order to maximize the ability of the College to obtain evidence, identify potential witnesses, conduct a thorough, prompt, and impartial investigation, and take prompt corrective action. A delay in reporting may result in the loss of relevant evidence and witness testimony, impairing the ability of the College to respond and take appropriate action.
2. An OWA who receives actual knowledge of a sexual harassment allegations must report this information to the Title IX Coordinator.
3. Any person who believes they have been a victim of sexual harassment, or any person who has observed or learned about an incident of sexual harassment, should report the incident immediately to the applicable Title IX Coordinator or any mandatory reporter of the College. Any mandatory reporter of the College who receives a report of sexual harassment must immediately refer the report to the Title IX Coordinator by providing a written notice which includes as much detail about the alleged incident as possible. If any person believes a crime has been committed, it should also be reported to law enforcement.

B. Response

1. Upon notification and awareness of allegations of sexual harassment, the College will take immediate safety and security measures and appropriate action to assess, and/or investigate what occurred. This obligation applies to sexual harassment

Title IX Sexual Harassment Policy and Procedures

covered by this Policy and Procedures regardless of whether a parallel law enforcement investigation or action is pending.⁵

2. Upon receiving a report of alleged sexual harassment, regardless of whether a formal complaint is filed, the Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. If the complainant does not wish to file a formal complaint and the Title IX Coordinator concludes that misconduct has occurred that does not meet the definition of sexual harassment as defined in Section II of this Policy, the Title IX Coordinator shall refer the matter for processing under any other applicable College Policy and Procedure, which may include the Code of Student Conduct, Complaint Policy and Procedures for Students, Complaint Policy and Procedures for Employees, Employee Misconduct Policy.
3. The Grievance Process outlined in Section VIII below shall be utilized for the immediate assessment, investigation, and resolution of all Title IX sexual harassment formal complaints. With or without a formal complaint, the College will respond promptly and in the manner described in Section VII.B.2, above.
4. The College will respond to reported incidents of sexual assault by ensuring the opportunity for complainants to obtain the appropriate medical attention and transportation to the nearest designated hospital (Frederick Health Hospital) with the Department of State Police Sexual Assault Evidence Collection Kits.
5. Both parties are provided access to personal counseling through the Behavioral Health and Wellness Office. The College provides access to mental health services through referrals, in accordance with the Memorandums of Understanding between the Mental Health Association of Frederick County and the Heartly House Incorporated, when services extend beyond the scope of the Behavioral Health and Wellness Office. In addition to providing counseling or taking immediate steps to protect the College community prior to any final investigative outcomes, effective corrective action may require interim measures.
6. Both parties will be advised of potential interim measures that may include, but are not limited to, the alteration of class/course schedules (including transfer to another section), permission to withdraw from and/or retake a class, permission to attend a class via alternative means (e.g., online or through independent study), the extension of assignment deadlines, voluntary leaves of absence, changes in work schedules, job assignments, and work locations, prohibited contact, and

⁵The Title IX Coordinator collaborates with the College Security office to inform the Local Law Enforcement agency, in accordance with the Memorandum of Understanding between the College and the Frederick Police Department, to report incidents of sexual assault.

Title IX Sexual Harassment Policy and Procedures

providing academic support services if such alternatives are feasible, consistent with College policies and procedures. Remedies for the broader student population extend beyond training, education, and prevention efforts already provided to include, but would not be limited to: designation of a member of the counseling staff to be on call and conduct climate checks.

C. **Equitable Treatment:** The College will treat complainants and respondents equitably by offering supportive measures to complainants and by adhering to the grievance process outlined in Section VIII of this Policy, before imposing any disciplinary sanctions or other sanctions that are not supportive measures against respondents.

D. **Emergency Removal:**

1. Nothing in this Policy shall preclude the College from removing a respondent from an education program or activity on an emergency basis, provided the College: (1) undertakes an individualized safety and risk analysis, (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and (3) provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
2. Emergency removals are not an appropriate action to address emotional or mental health needs, which should instead be addressed by supportive measures. All such removals must be made in accordance with other applicable laws, including but not limited to Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.
3. The College Behavioral Evaluation Response Team will be responsible for conducting the individualized safety and risk analysis in accordance with this subsection.

E. **Administrative Leave:** Nothing in this Policy shall preclude the College from placing a non-student employee respondent on administrative leave during the pendency of the grievance process described below. Placement of any employee on such administrative leave must be made in accordance with other applicable laws, including but not limited to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

F. If requested, the Title IX Coordinator will provide prompt assistance in notifying the appropriate law enforcement officials in collaboration with the College Security office. In cases of sexual assault/misconduct, individuals will be informed of their right to file criminal charges with the appropriate law enforcement official. The Frederick Police Department is located at 100 W. Patrick Street, Frederick, Maryland 21701, and the phone number is (301) 600-2101. Mandatory reporters are required to promptly notify the Title IX Coordinator of any reports of sexual assault/misconduct brought to their attention. The Title IX Coordinator works collaboratively with the reporting party and any other mandatory reporters needed in responding to the alleged

Title IX Sexual Harassment Policy and Procedures

- victim, making every effort to operate with discretion and maintain the privacy of the individuals involved.
- G. Reports of sexual harassment in violation of this Policy and Procedures may require interim measures to protect the safety and well-being of the parties and/or the College community pending the outcome of the investigative and adjudicative processes. The College will respond with all necessary measures to ensure the safety and security of all persons involved in any report of sexual harassment.
- H. The College will be as thorough as possible in the assessment and investigation of anonymous reports.
- I. Any student who reports to the College or a law enforcement officer an incident of sexual assault, and/or participates in good faith as a witness in an investigation of a sexual assault will not be subject to the College [Alcohol, Tobacco, Opioid, and Other Drug Use and Awareness Policy and Procedures](#), except for:
1. a mandatory intervention for substance abuse, if the College determines that the violation occurred during or near the time of the alleged sexual assault; and
 2. if the College determines that the alcohol or drug violation was an act that was reasonably likely to place the health or safety of another individual at risk.
- J. Individuals who engage in retaliatory behavior against a reporting party or party participating in an investigation are in violation of this Policy and Procedures and will be subject to appropriate disciplinary action. Individuals who believe they have experienced retaliation in violation of this Policy and Procedures should immediately report such conduct to the Title IX Coordinator.
- K. The College condemns the deliberate filing of false reports of sexual harassment. If a person is found to have deliberately filed a false accusation, they will be subject to disciplinary measures in accordance with prescribed policies and procedures governing student or employee behavior. A report of sexual harassment that is made in good faith, but is found to not be supported by the preponderance of the evidence, will not be considered a false report.
- L. Student Rights, Generally: Rights of students alleging or responding to a violation of the Title IX Sexual Harassment Policy and Procedures include:
1. Treatment with dignity, respect, and sensitivity by officials of the College during all phases of the disciplinary proceedings;
 2. A fair and impartial investigation;
 3. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the alleged complainant and respondent to be heard;

Title IX Sexual Harassment Policy and Procedures

4. Timely written notice of specified matters, including the student's rights and responsibilities under the Title IX Sexual Harassment Policy and Procedures, information regarding other civil and criminal options, and the range of potential sanctions associated with the alleged violation;
5. Participation in the disciplinary proceedings, including access to the case file and evidence;
6. Assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the disciplinary proceedings, as specified; and
7. The presence of no more than two people, including an advisor of the student's choice, an attorney, or an advocate at any hearing, meeting, or interview during the disciplinary proceedings.

VIII. Grievance Process

- A. **General Principles:** Upon receiving a formal complaint, the Title IX Coordinator(s) shall initiate the following grievance process, which shall at all times be guided by the following basic principles:
 1. Equitable treatment of the parties by providing remedies to a complainant after a determination of responsibility against a respondent has been made and by following the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the College education program or activity. Remedies may include the same actions described as supportive measures, but remedies need not avoid punishing or burdening the respondent.
 2. Objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and prohibition of credibility determinations depending on a party's status as complainant, respondent, or witness.
 3. Requirement that any person designated as a Title IX Coordinator, investigator, decision maker, or any person designated to facilitate an informal process not have a conflict of interest against complainants and respondents generally or an individual complainant and respondent. The College will ensure that all persons serving as Title IX Coordinators, investigators, decision makers, and informal resolution facilitators will receive training on: (a) the definition of sexual harassment set forth above; (b) the scope of the College education program or activity; (c) how to conduct an investigation and grievance process; and (d) how to serve impartially. The College will ensure that investigators also receive training on how to prepare an investigation report. The College will ensure that decision makers also receive training on any technology to be used at live hearings and on issues of evidence and questioning, including when questions and evidence about a complainant's sexual predisposition or prior sexual

Title IX Sexual Harassment Policy and Procedures

behavior are not relevant. Training shall not rely on sex stereotypes and shall promote impartial investigations and adjudication of formal complaints.

4. Presumption that the respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the grievance process.
 5. Prompt resolution of the grievance process, provided, however, that delays may be permissible for good cause such as law enforcement involvement, absence of a party, witness, or advisor, or translation or other accommodation needs.
 6. Description of the range of possible disciplinary sanctions and remedies the College may implement following any determination of responsibility.
 7. Application of the preponderance of the evidence standard for formal complaints against students and employees.
 8. Providing of an avenue and permissible bases for the parties to appeal.
 9. Provision of a range of supportive measures to the parties.
 10. Unless waived, the process will not allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege.
- B. Written Notice of Allegations.** Upon receiving a formal complaint, the Title IX Coordinator shall promptly, and in no event more than three (3) workdays thereafter, provide written notice to all known parties which shall contain:
1. Notice of the grievance process, including the informal resolution process;
 2. Notice of the allegations, including sufficient details known at the time (i.e., names of known parties, the conduct alleged to be sexual harassment, the date and location of the conduct, if known);
 3. A deadline (which shall be no fewer than seven (7) days and no greater than fourteen (14) days) by which the respondent shall provide a written response to the allegations to both the Title IX Coordinator and the investigator, whom the Title IX Coordinator shall identify;
 4. A statement that the respondent is presumed not responsible for the alleged conduct and that responsibility will be determined at the conclusion of the grievance process;
 5. Notice of the parties' right to have any advisor, who may be, but is not required to be, an attorney;
 6. Notice of the parties' right to inspect and review evidence; and

Title IX Sexual Harassment Policy and Procedures

7. Notice of any provision in the Code of Student Conduct that prohibits knowingly making false statements or providing false information during the grievance process.

If in the course of investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the original written notice, notice of the additional allegations must also be provided in writing to the known parties.

The Title IX Coordinator shall simultaneously provide a copy of the written notice described above to the investigator who shall have received the training described above. The Title IX Coordinator may serve as the investigator, or may appoint an investigator who is free from conflict of interest and bias and has received all trainings required by this Policy.

C. Dismissal of Formal Complaint.

1. **Mandatory.** The investigator must dismiss a formal complaint if the conduct alleged in the formal complaint:
 - a. Would not constitute sexual harassment as defined in Section II of this Policy even if proved;
 - b. Did not occur in the College education program or activity; or
 - c. Did not occur against a person in the United States of America.⁶

Such a dismissal shall not preclude action by the College under another applicable Policy/Procedure. Upon dismissing any formal complaint, the investigator shall promptly inform the Title IX Coordinator, who shall promptly refer the matter for processing under any other applicable College Policy and Procedure, which may include the Code of Student Conduct, Complaint Policy and Procedures for Students, Complaint Policy and Procedures for Employees, Employee Misconduct Policy.

2. **Permissive.** The investigator or decision maker may dismiss a formal complaint or any allegations therein if at any time during the investigation or other proceeding:
 - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - b. The respondent is no longer enrolled or employed by the College; or

⁶ Nothing in this Title IX Policy and Procedure prohibits the application of other College Policies and Procedures, including the Code of Student Conduct, to study abroad programs.

Title IX Sexual Harassment Policy and Procedures

- c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. **Notice Required.** Upon a dismissal required or permitted under this subsection, the Title IX Coordinator, investigator, or decision maker must promptly send written notice of the dismissal and reasons therefore simultaneously to the parties.
- D. **Consolidation of Formal Complaints.** The College may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
- E. **Informal Resolution.** After the filing of a formal complaint but before a determination regarding responsibility has been issued, the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the College:
 1. Provides the parties written notice disclosing:
 - a. The allegations;
 - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 2. Obtains the parties' voluntary, written consent to the informal resolution process; and
 3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The Title IX Coordinator will select an individual to serve as the informal resolution facilitator who will be free from conflicts of interest and bias, and will be trained to serve impartially.

F. Investigation of Formal Complaint.

The College will seek to conclude the investigation within thirty (30) workdays of receipt of the formal complaint. Extended time for investigations may be necessary, in which case both parties will be notified and the reason for the delay will be provided.

Title IX Sexual Harassment Policy and Procedures

The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not the parties. However, the parties acknowledge that the College cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional and made in connection with the provision of treatment to the party, unless the College obtains the party's voluntary, written consent to do so for the purposes of this grievance process.

Upon receiving the respondent's written response to the allegations contained in the written notice described above, the investigator shall:

1. Promptly:
 - a. Interview the complainant and respondent within five (5) workdays of the investigator receiving the respondent's written response (barring extenuating circumstances); and
 - b. Interview any individuals identified in the Title IX Coordinator's written notice, the respondent's written response, and/or the interviews with the complainant and respondent within ten (10) workdays following the interviews of the complainant and respondent (barring extenuating circumstances);
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
4. Provide the parties with the same opportunities to have others present during any meetings or proceedings, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, an attorney, provided, however, that the investigator and/or decision maker may establish restrictions regarding the extent to which the advisor may participate in the meetings or proceedings, as long as the restrictions apply equally to both parties;
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings, with sufficient time for the party to prepare to participate;
6. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
7. Provide both parties:
 - a. An equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal

Title IX Sexual Harassment Policy and Procedures

complaint, including evidence upon which the investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source;

- b. A copy of the evidence subject to inspection and review in electronic format or hard copy; and
 - c. All such evidence subject to inspection and review shall be made available to the parties during any hearing.
8. At least ten (10) workdays from the provision of such evidence, allow the parties to submit a written response to such evidence for consideration by the investigator; and
 9. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) workdays prior to the hearing regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

G. Hearing Process: This grievance process provides for a live hearing. Any hearing held pursuant to this Policy shall be conducted by the Title IX Hearing Panel in accordance with the following rules:

1. Each party is entitled to an advisor who will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
2. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice, and never by a party personally.
3. At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision maker and parties to simultaneously see and hear the party or the witnesses answering questions.
4. Only relevant cross-examination and other questions may be asked of a party or witness.
5. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
6. If a party does not have an advisor present at the live hearing, the College must provide without fee or charge to that party, an advisor chosen by the College,

Title IX Sexual Harassment Policy and Procedures

who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.⁷

7. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
8. If a party or witness does not submit to cross-examination at the live hearing, the decision maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
9. Live hearings pursuant to this Policy may be conducted with all parties physically present in the same geographic location or, at the discretion of the College, any or all parties, witnesses, or other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
10. The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
11. The Title IX Hearing Panel shall keep all information considered during the hearing process confidential in accordance with this Policy and Procedure and may be asked to sign confidentiality statements/agreements prior to serving as Title IX Hearing Panel members.

H. Determination Regarding Responsibility. The Title IX Hearing Panel shall issue a written ~~a~~ determination regarding responsibility within five (5) workdays of the hearing, which shall apply the preponderance of the evidence standard, and which shall contain:

1. Identification of the allegations potentially constituting sexual harassment as defined in Section II of this Policy;
2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

⁷ A party may seek legal representation from the [Maryland Higher Education Commission \(MHEC\) list of attorneys and legal services programs](#). Through MHEC, a student alleging or responding to a violation of the Title IX Sexual Harassment policy may select and retain, pro bono or at a reduced rate, an attorney from the MHEC list who may be paid by MHEC upon application of the attorney.

Title IX Sexual Harassment Policy and Procedures

3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the College Code of Student Conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College education program or activity will be provided by the College to the complainant; and
6. The College procedures and permissible bases for the complainant and respondent to appeal.

The Title IX Hearing Panel shall provide the written determination to the parties simultaneously, and shall also provide a copy to the Title IX Coordinator. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

If the final determination is that the alleged conduct occurred but did not meet the definition of sexual harassment as defined in Section II of this Policy, the Title IX Coordinator shall refer the matter for processing under another applicable College Policy/Procedure, which may include the Code of Student Conduct, Complaint Policy and Procedures for Students, Complaint Policy and Procedures for Employees, Employee Misconduct Policy

Extended time for decision may be necessary, in which case both parties will be notified.

- I. **Range of Disciplinary Sanctions and Remedies.** Sanctions and remedies may only be implemented following issuance of a determination regarding responsibility and should be implemented in a measured way based upon the totality of the circumstances. The following are examples of possible sanctions and remedies:
 1. Employees and students found in violation of this Policy and Procedure are subject to disciplinary action ranging from a disciplinary warning up to and including separation from employment or expulsion.
 2. Persons who commit sexual assault/misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.
- J. **Appeals.** Either party may appeal a determination regarding responsibility made by the Title IX Hearing Panel or a dismissal of a formal complaint or any allegations therein.

Title IX Sexual Harassment Policy and Procedures

Appeals shall be submitted to the Title IX Coordinator in writing by email, hard copy or US certified mail and must be received by the Title IX Coordinator within five (5) workdays of the notification of the Title IX Hearing Panel decision.

The Title IX Coordinator shall promptly notify the other party in writing when an appeal is filed and simultaneously provide a copy of the appeal materials. The Title IX Coordinator shall also notify both parties that the Title IX Coordinator shall arrange for a qualified third-party unaffiliated with the College to serve as the appellate decision maker. The appellate decision maker will be free from conflicts of interest or bias and will receive Title IX training required by this Policy and the Title IX regulations.

The appellate decision maker will consider the appeal based on one of the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Each party shall have the opportunity to submit a written response to any appeal no more than fourteen (14) days after the Title IX Coordinator provides a copy of the appeal materials.

The appellate decision maker shall make the determination to either uphold, modify, or reverse the Hearing Panel's decision.

The appellate decision maker shall issue a written decision simultaneously to both parties describing the result of the appeal and the rationale for the result within ten (10) workdays after the time for the parties to submit a written response has elapsed.

The College will continue to take interim preventative measures to ensure the safety and security of all parties involved during the pendency of the appeal.

The written determination regarding responsibility becomes "final" only after the time period to file an appeal has expired, or, if a party does file an appeal, after the appeal decision is sent to the parties.

K. Recordkeeping. The College shall maintain for a period of seven (7) years records of:

1. Each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any

Title IX Sexual Harassment Policy and Procedures

remedies provided to the complainant designed to restore or preserve equal access to the College education program or activity;

2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. The College shall make these training materials publicly available on its website.

For each response required under Section VII.B. of this Policy, the College shall maintain for a period of seven (7) years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College education program or activity. If the College does not provide a complainant with supportive measures, then the College shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

All records pertaining to Title IX sexual harassment involving students are maintained by the Title IX Coordinator using the secured College tracking system. The Director of College Safety, Security, and Emergency Preparedness submits the Clery Act Report and maintains Clery Act records. The Title IX Coordinator is responsible for maintaining records relating to sexual Harassment investigations and resolutions. Records shall be maintained in accordance with the College Records Retention Policy and Procedures.

IX. Retaliation

- A. Retaliation Prohibited.** The College shall not, and shall not permit any of its employees, agents, or students, to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX and its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Student Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, its regulations, and this Policy, constitutes retaliation.

The College shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a

Title IX Sexual Harassment Policy and Procedures

report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted or required by law.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination described above.

B. Conduct Not Constituting Retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation under this Policy. Charging an individual with a Code of Student Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation under this Administrative Regulation.

X. Compliance with Grants and Work-sharing Agreements.

The College will comply with all notification requirements regarding sexual harassment imposed as a condition of being the recipient of any grant or party to any work-sharing agreement with any outside agency or institution.

XI. Resources Available

Students or others who are not sure whether they want to make a report should still seek help from the resources listed. These resources are provided to offer support and information.

**Title IX Sexual Harassment
College and Community Resources
In Case of an Emergency on Campus
College Security**

Call 4444 from a main campus phone or a Monroe Center office phone
or 301.846.2453 from any other phone

Confidential Resources to Discuss Sexual Harassment
Frederick County Hotline
A service of the Mental Health Association of Frederick County
24/7 Information and Referral for Crisis Intervention
Call 211 or 866-411-6803
www.211md.org

Title IX Sexual Harassment Policy and Procedures

Nearest hospitals equipped with the Department of State Police
Sexual Assault Evidence Collection Kit
Frederick Health Hospital
240-566-3300
Carroll Hospital
410-848-3000

Heartly House - Crisis Hotline
301-662-8800
www.Heartlyhouse.org

Maryland Coalition Against Sexual Assault (MCASA)
410-974-4507
www.mcasa.org

National Sexual Assault Hotline
A free and confidential 24/7 hotline for incidents occurring outside of Maryland
1-800-656-HOPE (4673)

Rape, Abuse and Incest National Network (RAINN)
24/7 support
1-800-656-HOPE (4673)
www.rainn.org

Sexual Assault Legal Institute (SALI)
1-877-496-SALI (7254)

For Guidance in Filing a Complaint

Eugene Smith, Title IX Coordinator
Frederick Community College
Student Center, Office H103A
7932 Opossumtown Pike
Frederick, MD 21702
esmith@frederick.edu
Office: (301) 624-2707

Executive Director of Diversity, Equity, and Inclusion
Beth Douthirt Cohen, 301-624-2711

For Information on Programs and Training

Executive Director, Center for Student Engagement
Jeanni Winston-Muir, 301-846-2489

Title IX Sexual Harassment Policy and Procedures

XII. Related Policies and Procedures

[Alcohol, Tobacco, Opioid, and Other Drug Awareness](#)

[Code of Conduct for Visitors, Guests, and Volunteers](#)

[Code of Student Conduct](#)

[Complaint Policy and Procedures for Employees](#)

[Complaint Policy and Procedures for Students](#)

[Employee Code of Ethics](#)

[Employee Misconduct](#)

[Non-Discrimination](#)

[Student Athlete Concerns about Athletic Programs and Activities](#)

[Technology Use](#)