



## Guidelines/Procedures

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**SUBJECT:** Sexual Misconduct Investigation Procedures (3.10.003.2)  
**Guideline/Procedure for AR#:** 3.10.003  
**Date Effective:** 08/14/2020

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### Purpose

These Sexual Misconduct Investigation Procedures are established to provide notice to students and employees about individual rights and the College's process for prompt and equitable resolution when investigating complaints of Sexual Misconduct that do not fall under the Title IX process located in 3.10.003.1.

### Definitions

*"Complainant"* means an individual who is alleged to be the victim of conduct alleged under College Policy and this Rule.

*"Sexual Misconduct"* is an umbrella term that refers collectively to the below offenses that are prohibited. Those offenses include the following and are defined in more detail in Administrative Rule 3.10.003:

- Sexual Harassment/Discrimination
- Sexual Assault, which includes Non-Consensual Sexual Penetration and Sexual Touching
- Intimate Partner Violence which includes Dating Violence and Domestic Violence
- Sexual Exploitation
- Stalking
- Gender-based harassment and discrimination that is non-sexual

*"Respondent"* means an individual who has been reported to be the perpetrator of conduct alleged under College Policy and this Rule.

*"Supportive measures"* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without a fee or charge to the complainant or respondent. Supportive measures are afforded to both a respondent and complainant at any point after a report of alleged Sexual Misconduct is received by the College District, regardless of whether a Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College District's education program or activity without unreasonably burdening the other party, including measure to protect the safety of all parties, or deter Sexual Misconduct.

## **I. Application of Sexual Misconduct Investigation Procedures**

These investigation procedures apply to reports or complaints of Sexual Misconduct that fall under the definition of Prohibited Conduct in Administrative Rule 3.10.003 but do not meet the definition of Title IX Sexual Harassment, or the Title IX Grievance Procedures found in 3.10.003.1 do not apply. The District Title IX Coordinator will review and assess reports of Sexual Misconduct to determine the applicable investigation procedure and most appropriate manner in which the College should respond to reports alleging Sexual Misconduct.

### ***i* Initial Report, Preliminary Inquiry, and Determination of Jurisdiction**

Upon receiving a report (either verbally or in writing) of a potential violation of this Rule alleging Sexual Misconduct, the District Title IX Coordinator will assess the report independently, or in concert with the appropriate personnel or parties, Responsible Employee, or Third Party (depending on who the report was made to and depending on the facts and circumstances being alleged). If necessary, the District Title IX Coordinator may conduct a preliminary inquiry to gather information to determine if this Rule has jurisdiction over the alleged prohibited conduct reported.

- To ensure ACC community members are safe and are able to continue in their educational programs or employment, a preliminary inquiry may be necessary under the following circumstances:
- A report received from a Third Party does not include enough information to proceed with an investigation, such as the identity of the parties or witnesses, but the report alleges Sexual Misconduct
- A Complainant makes a report but does not want the College to take any action after reporting or requests confidentiality.
- In response to the receipt of an anonymous report.
- If the District Title IX Coordinator determines that this Rule has jurisdiction over the conduct being alleged, the District Coordinator will inform the appropriate Executive Dean or the Vice President, Human Resources about the case.
- The District Title IX Coordinator will provide the Complainant with a “Written Notice of Rights & Options” in response to any alleged Sexual Misconduct that includes dating violence, domestic violence, sexual assault, or stalking, regardless of where or when the misconduct occurred.

### ***ii* Persons Covered**

These procedures apply to all ACC community members, including students<sup>1</sup>, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, conducting business, studying, visiting, or having any official business with the College or on its property.

The College strongly encourages reports of Sexual Misconduct regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Respondent, the

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<sup>1</sup> Dual credit students are subject to this Rule. For purposes of this Rule a student is someone who is not currently enrolled but is registered for classes in the future, was previously enrolled and is able to enroll in the future, or withdraws any time after notification of the allegation. Students who also serve in the capacity of an employee of the College will be subject to the procedures determined by the District Title IX Coordinator to be most appropriate.

College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community and prevent recurrence, if possible.

**iii Locations Covered**

These procedures apply to all on-campus conduct and some off-campus conduct, described below. The College strongly encourages reports of Sexual Misconduct regardless of location. Even if the Rule does not apply to the conduct because of its location, the College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community and to prevent recurrence, if applicable.

On-Campus Conduct. These procedures apply to conduct that occurs on-campus, including conduct which occurs on property owned or controlled by the College.

College Programs. These procedures apply to conduct that occurs in the context of College employment or education programs or activities.

Off-Campus Conduct. These procedures apply to conduct that occurs off-campus and has continuing adverse effects on, or creates a hostile environment for, any member of the ACC community as defined in Section II(A.) above, on-campus or in any College employment or education program or activity.

**iv Emergency Removal or Administrative Leave**

*Emergency Removal for Students:*

The College may remove a student from the College's education program or activity on an emergency basis, subject to an individualized safety and risk assessment that determines there is an immediate threat to the physical health or safety of any student or other individual arising from the sexual harassment allegations. A student will receive notice and an opportunity to appeal the College's decision for emergency removal.

The District Title IX Coordinator, or designee, has the discretion to remove a student on an emergency basis for the reasons stated above. A student Respondent who has been notified of the emergency removal has the right to a meeting within three (3) business days<sup>2</sup> with the appropriate Executive Dean to appeal the emergency removal. The Executive Dean reviews the appeal to determine whether the decision to remove a student on an emergency basis was arbitrary or capricious. A decision is arbitrary and capricious where there is no rational connection between the facts presented and the decision made.

*Suspension/Administrative Leave for Employees:*

At any time after the receipt of the reported conduct, the College at its discretion may suspend a College organization or place an employee on suspension/administrative leave pending resolution of the report. Provisions for suspension of faculty members are contained in Board Policy DMAA (Local) and the Employee Handbook. Suspensions of other College employees shall be made in accordance with the Employee Handbook and Administrative Rules.

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<sup>2</sup> College business days are Monday through Friday, except when the College is closed on dates noted in the Academic calendar for holidays and breaks, or due to weather related closure if closed for a full business day.

## **II. Sexual Misconduct Investigation Procedures**

### ***i Modification of Investigation Process***

The College will follow the Investigation Process described herein barring exceptional circumstances. In rare instances, however, the College may be required to adapt or modify the Investigation Process (including timelines) to ensure prompt and equitable resolution of a report of Sexual Misconduct. The College reserves this right. In such instances, the College will notify both Parties of the modification of the Investigation Process and, if appropriate, the exceptional circumstances requiring the College to adapt or modify the Investigation Process.

### ***ii Consolidation of Investigations***

The District Title IX Coordinator has the discretion to consolidate into one Investigation multiple reports against a Respondent and/or cross-complaints between a Complainant and a Respondent, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under the Student Standards of Conduct investigation and disciplinary process.

### ***iii Integrity of Proceeding***

These procedures are entirely administrative in nature and are not considered legal proceedings, but rather procedures designed to address policy violations.

While either Party may bring a legal representative or other advisor to the proceeding, the role of the lawyer or advisor is limited to providing advice and counsel to that Party. The lawyer or other advisor is not permitted to speak on behalf of the Party, to make arguments to the tribunal, to cross-examine individuals, or otherwise to act in a representational capacity or as a proxy for the Party. If a Party intends to bring a lawyer or advisor, they are to provide notice of this decision in writing no less than 3 days before the proceeding. The process will not be delayed due to the unavailability of an advisor or lawyer. An advisor or lawyer may be dismissed from any part of this process for unnecessary disruption of a meeting or proceeding or if they are deemed to have intimidated or otherwise harassed a Party through verbal, nonverbal, or physical actions. The College has the discretion to request its legal counsel attend any proceedings.

The College reserves the right to serve as a Complainant in any matter and to bring complaints against a Respondent(s). This is unusual but can occur when the College feels there is sufficient information to proceed, but an actual Complainant either cannot or will not cooperate in this process. In the event this occurs, the College will notify the Complainant whether or not the College will proceed with an investigation.

### ***iv Student Withdrawal/Employee Resignation***

If an employee resigns or a student withdraws, completes the semester/course, or graduates from the College pending a disciplinary charge alleging that the student/employee violated this Rule, the College will not end the disciplinary process. Under these circumstances, the College District shall expedite the process as necessary to accommodate the parties' interests

in a speedy resolution. The College will not issue a transcript to a student until the College makes a final determination of responsibility. The College will not be able to make a determination whether an employee is eligible for rehire until the College makes a final determination of responsibility.

v ***Formal Resolution: Assignment of Case to Investigator***

- The District Title IX Coordinator will then assign the case for investigation by an ACC employee (or employees) trained in conducting Title IX investigations, or in certain circumstances by an outside person (or persons) who is trained in conducting Title IX investigations. The pool of investigators may include trained administrators and faculty members. If an employee is the Respondent, confidential information may also be disclosed with appropriate personnel by the investigator assigned or the District Title IX Coordinator. Employee College email may be searched with the approval of the Vice President, Human Resources.
- A written complaint is not required when reporting alleged Sexual Misconduct. Should a Complainant submit a written complaint, the Respondent will be provided with a copy to review. The Complainant will be informed that this information will be shared. If a report<sup>3</sup> of alleged sexual misconduct is received verbally, the District Title IX Coordinator will reduce to writing a summary of the allegations and provide them to the Respondent prior to the initial interview of the allegations.
- The District Title IX Coordinator will meet separately with the Parties if possible to provide written notice that an investigation will ensue. Both Parties will receive a copy of this Rule and will be advised on the offense being alleged, the date and time that the incident is alleged to have occurred, and the name of the Investigator (if known at that time). The Parties will also be provided with information on all on and off campus resources available to support them through the process as well as their right to have an advisor of choice<sup>4</sup> accompany them to any meeting or disciplinary proceeding in which they are required to be present. The letter will outline the major timeframes of the process and explain where the Parties are in the process currently. The District Title IX Coordinator will also advise the Parties that they have the right to present any evidence and/or witnesses that they would like included in the fact-finding. Both Parties will also receive notice of the following:

**Complainant's and Respondent's Joint Rights**

1. The complainant and the respondent will each be given an opportunity to meet with a trained investigator and provide supporting evidence.
2. The complainant and the respondent will each be given an opportunity to be advised by a personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting. An advisor may only consult and advise his or her advisee, but shall not speak for the advisee at

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<sup>3</sup> This report which summarizes the complaint does not represent the College's position or opinion in response to the allegation(s). It is only a way to document verbal reports in order to provide the Respondent with sufficient information to respond to the alleged misconduct.

<sup>4</sup> ACC employees may serve as advisors only if they voluntarily agree and their presence does not present a conflict of interest with regard to their job responsibilities or this investigations process.

- any meeting;
3. A decision is based on the preponderance of evidence standard, i.e. "more likely than not to have occurred" standard. In other words, the investigation process asks: "Is it more likely than not that the respondent engaged in Sexual Misconduct in violation of the College's Policy and Administrative Rule 3.10.003?"
  4. The complainant and the respondent will be notified simultaneously in writing of the outcome of any disciplinary proceeding, as well as any changes to those result or disciplinary actions prior to the time that such results become final; and
  5. The complainant and the respondent each have the right to appeal the outcome of the investigation and will be notified simultaneously in writing of the final outcome after the appeal is resolved.

***vi Exceptions to Formal Resolution***

At the discretion of the District Title IX Coordinator, the following exceptions may apply to proceeding with Formal Resolution:

1. If the College lacks jurisdiction over a party to the complaint;
2. If the report is being addressed through Informal Resolution;
3. If a Complainant stops participating in either the Formal or Informal Resolution process, the College will either serve as the Complainant moving forward or the District Title IX Coordinator will resolve the complaint, if appropriate, and modify procedures where necessary;
4. If a Respondent admits responsibility for the alleged conduct, the District Title IX Coordinator shall have discretion to resolve the complaint outside the Formal Resolution process or to provide modified procedures and appropriate sanctions/remedies to prevent the reoccurrence of the conduct. This includes reports of consensual prohibited relationships that violate this Rule; or
5. If a report of alleged Sexual Misconduct is made by a Third Party, and the alleged victim(s) does not wish to participate, does not want the College take any action, or wants to remain confidential, the District Title IX Coordinator shall have the discretion to resolve the complaint outside the Formal Resolution process or modify procedures, if appropriate and this does not result in a violation of a Respondent's due process rights. The College also has the option of serving as the Complainant if deemed necessary.
6. If the report of conduct as alleged does not rise to the level of unlawful Sexual Misconduct, it may be addressed administratively, in consultation with the appropriate personnel.

***vii Informal Resolution***

As an alternative to Formal Resolution, and *only* if the District Title IX Coordinator determines that it is appropriate, the Parties may choose to resolve complaints through Informal Resolution. Informal Resolution may be appropriate for alleged conduct that has not created a hostile environment or deprived an individual of participation in the College's educational programming or employment. Less serious, yet inappropriate behaviors can be addressed through informal resolution as an alternative to formal resolution.

The Parties may proceed to Informal Resolution only if the following occurs: *first*, the District Title IX Coordinator determines that the complaint may be resolved appropriately through Informal Resolution; *second*, the Complainant agrees to Informal Resolution; and *third*, the Respondent agrees to Informal Resolution. If *any* of the three conditions is not met, the case will proceed to Formal Resolution. If all three conditions are met, the District Title IX Coordinator will notify the Parties within five (5) business days after all parties have agreed to Informal Resolution and proceed through the Informal Resolution Process.

The nature of Informal Resolution is flexible, and not all complaints resolved through Informal Resolution will proceed in uniform fashion. Typically, however, the District Title IX Coordinator will ask the Complainant to prepare a written report, which sets out the factual basis for the complaint and any proposed resolution. The Complainant will be asked to provide the written report to the District Title IX Coordinator within five (5) business days of conclusion of the initial meeting between the Complainant and the District Title IX Coordinator.

The District Title IX Coordinator will share the Complainant's written report with the Respondent and will ask the Respondent to provide a written response to the report within five (5) business days of reviewing the Complainant's report. The District Title IX Coordinator will then meet separately or together with both Parties to discuss potential alternative resolutions based on the Parties' statements and (if applicable) other information available. The District Title IX Coordinator will not serve as a fact finder, but rather, aid in identifying possible alternative resolution(s) to the complaint. Possible alternative resolution(s) may include, but are not limited to:

- Permanent no-contact order between the Parties
- Specific personal boundaries if a no-contact order is unwanted by both parties
- Academic or work location reassignment
- Written apology and/or explanation of the circumstances surrounding the investigation
- Verbal apology
- Educational remedies
- Return personal belongings
- Agreed upon sanctions or remedial measures
- Other appropriate measures

If the Parties reach agreement, the matter is closed. If not, the Formal Resolution will commence, provided that none of the exceptions to Formal Resolution outlined in Section G above are applicable. Any Party (including the District Title IX Coordinator) may terminate the Informal Resolution process at any time. In that event, the District Title IX Coordinator will so notify the Parties in writing and will describe the next steps to resolve the report.

### **viii Investigation Phase**

- The District Title IX Coordinator will contact the Parties and set a date and time for the initial interview with the Investigator with each party (separately.)
- During the initial interview the Investigator will restate the investigation process.
- The Investigator will conduct a thorough and impartial investigation into the facts of the case and additionally interview any witnesses relevant to the fact-finding and inspect and

collect evidence submitted or uncovered. Mere character witnesses are not considered witnesses that have information related to the allegation and will not be interviewed.

- If the investigation is conducted by an outside person, the District Title IX Coordinator shall provide the investigator with any relevant ACC policies and procedures or any materials that the investigator will need to conduct a thorough investigation.
- If, during the course of the investigation, other violations of ACC policies or procedures or statutes are discovered, the violations should be communicated to the District Title IX Coordinator. The District Title IX Coordinator will consult with the appropriate College personnel to determine the best course of action to respond to such violations. This may include management of those violations in accordance with the related policies and procedures, or the District Title IX Coordinator will address such violations in this process subject to the approval of the appropriate personnel with the requisite authority. An individual will be provided with the required amount of due process afforded to them depending on the facts and circumstances of the violation and corresponding sanctions, if applicable. Sanctions issued for these violations may be issued within this process, as well as appealed in accordance with the provisions outlined in Section ix below.

**a. Preliminary Investigative Report**

- At the conclusion of the investigation, the Investigator will draft a Preliminary Report and provide the report to the District Title IX Coordinator. The District Title IX Coordinator will determine if the investigation is in fact complete or will re-direct the Investigator to conduct further fact-finding.
- Once fact-finding is complete, the District Title IX Coordinator will review the Preliminary Report submitted by the Investigator with the appropriate Executive Dean (if the Respondent is a student) or Vice President of Human Resources (if the Respondent is an employee). The District Title IX Coordinator will then meet with the Complainant and Respondent separately to discuss the major facts that will be used to reach an outcome and to allow the parties the opportunity to present any information, evidence or witnesses that were not included in the investigation but are substantively relevant to the findings of the investigation.
  - The parties will have five (5) business days from the date of this meeting to provide a written response to the District Title IX Coordinator citing any further information, evidence or witnesses that they would like to be considered.
  - If one or both of the parties provides a written response, the District Title IX Coordinator in consultation with the appropriate Executive Dean (if the Respondent is a student) or Vice President of Human Resources (if the Respondent is an employee), will determine if there is a need for further investigation, and if so, the District Title IX Coordinator will direct the Investigator to conduct further investigation until the Investigator determines the fact-finding is complete.
  - Information that is not substantively relevant to the investigation may not be considered or result in additional fact finding. Any new information that is relevant to the investigation will be revealed to the Complainant and the Respondent.

- If neither party provides a written response fact finding will be determined to be complete.

**b. Final Report of Investigator**

- Once fact finding has been completed, the Investigator will provide a Final Report to the District Title IX Coordinator and appropriate Executive Dean (if the Respondent is a student) or Vice President of Human Resources (if the Respondent is an employee) including a finding(s) of responsibility and recommendation as to whether or not, misconduct (as defined in this Rule) occurred, using the preponderance of the evidence standard.

**c. Determination of Misconduct and Sanctions & Remedial Measures**

- If the report proceeds through Formal Resolution and the Respondent is found responsible for one or more violations of this Rule, the College will issue sanctions commensurate with the violation(s). (Sanctions may also be issued if agreed upon during Informal Resolution.) Absent a finding of responsibility, remedial and supportive measures may be issued if warranted to address inappropriate behavior that does not rise to the level of a violation of College Policy or this Rule. Remedial measures may include counseling, monitoring, training or other preventative measures intended to educate an individual as to appropriate behaviors and boundaries. If during an investigation under this Rule, conduct is found to be in violation of other ACC policies or procedures or statutes, sanctions may be issued within this process after consultation with the appropriate personnel with the requisite authority.
- The District Title IX Coordinator, in consultation with the appropriate Executive Dean (if the Respondent is a student) or Vice President of Human Resources (if the Respondent is an employee), will review the findings, determine whether misconduct as defined by this Rule occurred, and issue sanctions or remedial measures if there is a finding of responsibility for a violation(s) of this Rule.
- A variety of sanctions consistent with the Sanctioning Guidelines in Administrative Rule 3.10.003 Section VI may be employed. Sanctions may deviate from the guidelines on a case-by-case basis when circumstances merit deviation.
- Sanctions are effective immediately. If the Respondent appeals the findings contained in the Final Report, the sanctions will continue in effect during the appeal.
- If the findings do not determine misconduct as defined by this Rule occurred, remedial measures may be issued to achieve the goals of College Policy and this Rule. (See Section VI of Administrative Rule 3.10.003).
- If the investigation determines the conduct violates any other College Policy, sanctions may be issued in this process. (See Section VI of Administrative Rule 3.10.003).
- The District Title IX Coordinator will communicate decisions regarding responsibility, the reason for the determination of responsibility, remedial measures (if any) and sanction(s) (if any) to the Complainant and Respondent simultaneously and in writing by College email. Outcome notices may also be shared with personnel who are tasked with the responsibility of monitoring or enforcing remedial measures

or sanctions to ensure compliance, or because of any other educational purpose related to the safety and security of the ACC community.

*ix Appeals*

All determinations, including “not responsible findings”, may be appealed by either Party.

Appeals are not heard in person; instead, all requests for appeal must be submitted in writing within five (5) business days from the date on the letter notifying the Respondent or the Complainant of the outcome of the investigation. The appeal should state reasons and grounds for the appeal.

If the Respondent of the Formal Complaint is a student, appeals should be submitted to the Provost to be the appellate officer. If the Respondent of the Formal Complaint is an employee, appeals should be submitted to the Executive Vice President, Finance and Administration to be the appellate officer.

Failure to appeal within the allotted time will render the outcome of the investigation final. The fact that one of the parties disagrees with the dismissal of the Formal Complaint or determination regarding responsibility does not in and of itself constitute grounds for appeal.

Appeals shall be granted only on one or more of the following grounds:

1. If there was a specified procedural error (or errors) in the interpretation of the College regulations that were so substantial as to effectively deny the party appealing a fair investigation or resolution process;
2. If new and significant evidence has become available which could not have been discovered by a properly diligent person during the original investigation, and the new evidence could affect the outcome of the matter;
3. If the Title IX Coordinator or Investigator(s) has 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; or
4. If the sanction(s) is/are disproportionate to the offense for which the respondent was found responsible.

Both Parties will receive notice when an appeal is filed and be informed that the appeal procedures apply equally to both Parties. The non-appealing Party will have five (5) business days from receipt of the notice that an appeal has been filed to submit a written statement in support of, or challenging, the outcome.

If the appellate officer finds there are no grounds for an appeal, then the Parties will be notified in writing that the outcome of the investigation is final.

If the appellate officer finds grounds for appeal, within ten (10) business days from the date the appeal was received, the appellate officer shall issue a written decision.

The appellate officer has authority to dismiss the case, change the sanction, modify the findings, or uphold the findings and sanctions. The appellate officer must base its decision on the information presented in the appeal and a review of the record in the case. The scope of the appellate officer’s review is limited to the grounds for appeal identified in the appeal letter. The appellate officer shall send written final decision to the District Title IX

Coordinator.

The decision of the appellate officer is final and there is no further appeal within the College. The District Title IX Coordinator will communicate decisions regarding the appeal to the Complainant and Respondent simultaneously via College email.

The imposition of sanctions is not normally deferred during the appeal process and sanctions may go into effect immediately if the District Title IX Coordinator deems it necessary. Supportive measures will remain in place during the appeal process.