

AGNES SCOTT COLLEGE SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY with PROCEDURES

This policy is intended to address all forms of sex and gender-based discrimination and harassment, including sexual violence, that impacts any member of the Agnes Scott community. The college will refer to this policy in shorthand as the “Title IX Policy.”

Sexual Harassment, as defined and prohibited by the Title IX Regulations (34 CFR Part 106), additionally includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation. The Agnes Scott College Title IX Regulation Process, contained in this Policy, will address Title IX-governed *Sexual Harassment*.

Sexual Misconduct, as defined and prohibited by Agnes Scott College by policy, includes forms of sex and gender-based discrimination, harassment and violence not covered by the Title IX Regulations. The Agnes Scott College Policy Process addresses *Sexual Misconduct* and will be managed in concert with corresponding *Sexual Misconduct and Other Discrimination, Harassment Policy*.¹

Introduction

Agnes Scott College (“Agnes Scott” or “College”) is committed to providing a healthy learning and work environment that is safe and characterized by mutual trust and respect for all members of our community. This commitment, as well as the College’s obligations under federal law, means that the College will not tolerate discrimination against or harassment of any individual or group based upon race, color, national origin, religion, sex, sexual orientation, gender identity, gender expression, age, disability or veteran status or any other prohibited factor under law.

Agnes Scott prohibits and will act to prevent, address, and eliminate all forms of gender-based and sexual discrimination, harassment, violence and retaliation. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College will provide resources to promote awareness, literacy and prevention of sexual violence and harassment; as well as support to members of our community who experience, encounter, and/or witness behavior that violates this policy and the ethics of our institution.

Title IX of the Education Amendments of 1972 protects individuals from discrimination based on sex, including sexual harassment and sexual violence, in education programs or activities which receive Federal financial assistance. Agnes Scott College has jurisdiction over complaints pursuant to Title IX or this policy.

1. Definitions

Applicable to the Title IX Regulation Process and the Non-Title IX College Policy Process

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Title IX Regulation Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity.

¹ The Agnes Scott College “Sexual Misconduct and Other Discrimination, Harassment Policy” (“Nondiscrimination Policy”) governs all forms of prohibited discrimination, harassment, and violence. The Nondiscrimination Policy also specifically governs gender-based misconduct that does not fall within Title IX Regulation jurisdiction. (“Sexual Misconduct”)

- *Complaint (or formal Complaint)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that Agnes Scott investigate the allegation.
- *Confidential Resource* means an employee who is not a Required Reporter of sexual harassment, sexual misconduct and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Agnes Scott is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Agnes Scott exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by Agnes Scott.
- *Final Determination:* A conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- *Finding:* A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Grievance Process Pool (also Adjudication Pool)* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-Maker* or Panel refers to those who have decision-making and sanctioning authority within Agnes Scott’s Formal Grievance or Adjudication Process.
- *Investigator* means the person(s) charged (internal or external to the college) by Agnes Scott with gathering facts about an alleged violation of this Policy, assessing relevance and facts that may relate to credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator, Official with Authority or Required Reporter (for the *Policy Process*) of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Policy* means this policy which implements the Title IX Sexual Harassment regulations and the Agnes Scott non-Title IX Sexual Misconduct related policies.
- *Pool Member* can mean an investigator, panel member, Decision-maker, Advisor or Appeal Officer – internal or external to the college - all of whom will be trained per federal requirements in each role.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Agnes Scott’s educational program.
- *Report* means notice or communication to the College of potential sexual harassment, sexual misconduct and/or retaliation that seeks information and/or support and will not be considered a *Complaint (formal)* or request for a *Formal Grievance Process*.

- *Reporter* is an individual who is not a Complainant, and who voluntarily reports incidents of sexual harassment, sexual misconduct and/or retaliation experienced by another person.
- *Required Reporters* are Agnes Scott employees (excluding Union employees). Required Reporters are obligated by policy to share knowledge, notice, and/or reports of sexual harassment, sexual misconduct and/or retaliation with a Title IX Coordinator, Deputy Title IX Coordinator, and/or their supervisor.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal process, [Adjudication Process](#) or Formal Grievance Process.
- *Sanction* means a consequence imposed by Agnes Scott on a Respondent who is found to have violated this policy.
- *Title IX Coordinator* is at least one official designated by Agnes Scott to ensure compliance with Title IX and Agnes Scott’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance or Adjudication Process Pool.

Definitions Applicable to the Title IX Regulation Process

- *Formal Grievance Process* [or *Regulatory Formal Grievance Process*] means the “Regulation Process,” a method of formal resolution designated by Agnes Scott to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Official with Authority* (OWA) means an employee of Agnes Scott explicitly vested with the responsibility to implement corrective measures for Sexual Harassment (inclusively as defined by the Title IX Regulations) and/or retaliation on behalf of Agnes Scott.
- *Regulation Process* means the Title IX Regulatory Formal Grievance Process detailed below and defined above.
- *Sexual Harassment* is the umbrella category – mandated by Title IX regulations - including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. [See Section 16](#) for greater detail.

Definitions Applicable to the Non-Title IX College Nondiscrimination Policy Process

- *Adjudication* means the “**Policy Process**,” a method of formal resolution designated by Agnes Scott to address conduct that does not fall within the Title IX regulations (34 CFR §106.45) but which is prohibited by Agnes Scott policies.
- *Harassment based on sex or of a sexual nature (“Harassment”)* means unwelcome sexual advances, requests for sexual favors, other verbal or physical harassment of a sexual nature, or offensive remarks about a person’s sex. Sexual harassment may occur in a single egregious instance or may be the cumulative result of a series of incidents and may include, but is not limited to, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, sexual orientation, or gender presentation, even if those acts do not involve conduct of a sexual nature.

- *Hostile Environment* means an environment that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive based upon sex, race, color, religion or creed, national origin or ancestry, age, physical or mental disability, veteran status, genetic information or citizenship.
- *Intimate Partner Violence (IPV)* means physical, sexual, or psychological harm by a current or former partner (or spouse). This type of violence can occur between heterosexual or same-sex couples whether cohabitating or not, and does not require sexual intimacy. IPV can vary in frequency and severity and can include acts of physical violence, sexual violence, threats of violence, or psychological or emotional violence. Psychological or emotional violence is a broad term that results in trauma to a victim caused by acts, threats of acts, or coercive tactics, and can include acts of humiliation, intimidation, isolation, stalking, and harassment. In some cases, the term IPV can be used interchangeably or to include Dating Violence and Domestic Violence.
- *Non-Consensual Sexual Contact* means having or attempting to have contact of a sexual nature with another person without consent and/or by force. Sexual contact can include, but is not limited to, nonconsensual touching or kissing another individual.
- *Policy Process* means any process designated by Agnes Scott to apply to *sexual misconduct* only when the Title IX *Regulation Process* does not, as determined by the Title IX Coordinator.
- *Sexual Exploitation* is an act or acts attempted or committed by a person for sexual gratification, financial gain, or advancement through the abuse or exploitation of another person's sexuality. Examples include observing individuals without consent, non-consensual audio or videotaping of sexual activity, unauthorized presentation of recordings of a sexual nature, prostituting another person, allowing others to observe a personal consensual sexual act without the knowledge or consent of all involved parties, and knowingly exposing an individual to a sexually transmittable infection or virus without his or her knowledge. In some cases, demonstrated sexual exploitation may satisfy the definition of Sexual Harassment above.
- *Sexual Misconduct* is the umbrella category of gender-based discrimination, harassment or violence that is prohibited by Agnes Scott policy but not covered by Title IX regulations. Sexual misconduct as defined by this policy may also be a crime under federal and/or Georgia law. The College recognizes that anyone can be a victim or offender regardless of sex, gender, or gender identification. This policy, and the related **Sexual Misconduct and Other Discrimination, Harassment Policy** are utilized by Agnes Scott to respond promptly, thoroughly, and equitably to reports of potential sexual misconduct, including sexual violence.
- *Stalking*. Under Georgia law, “[a] person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.” O.C.G.A. § 16-5-90. By this policy, Agnes Scott further defines stalking as a course (more than once) of non-consensual conduct directed toward another person that could be reasonably regarded as likely to alarm, harass, or cause reasonable fear of harm or injury in that person, or in a third party, such as a roommate or friend. The feared harm or injury may be to physical, emotional, or mental health, to personal safety, to property, to education, or to employment. Stalking may include, but is not limited to, unwelcomed and repeated visual or physical proximity to a person, repeatedly conveying oral or written threats, extorting money or valuables, implicitly threatening physical conduct, or any combination of these behaviors directed at or toward a person. Stalking includes cyber-stalking. In some cases, demonstrated stalking may satisfy the definition of stalking pursuant to VAWA and therefore may be subject to the Title IX Regulation Process.

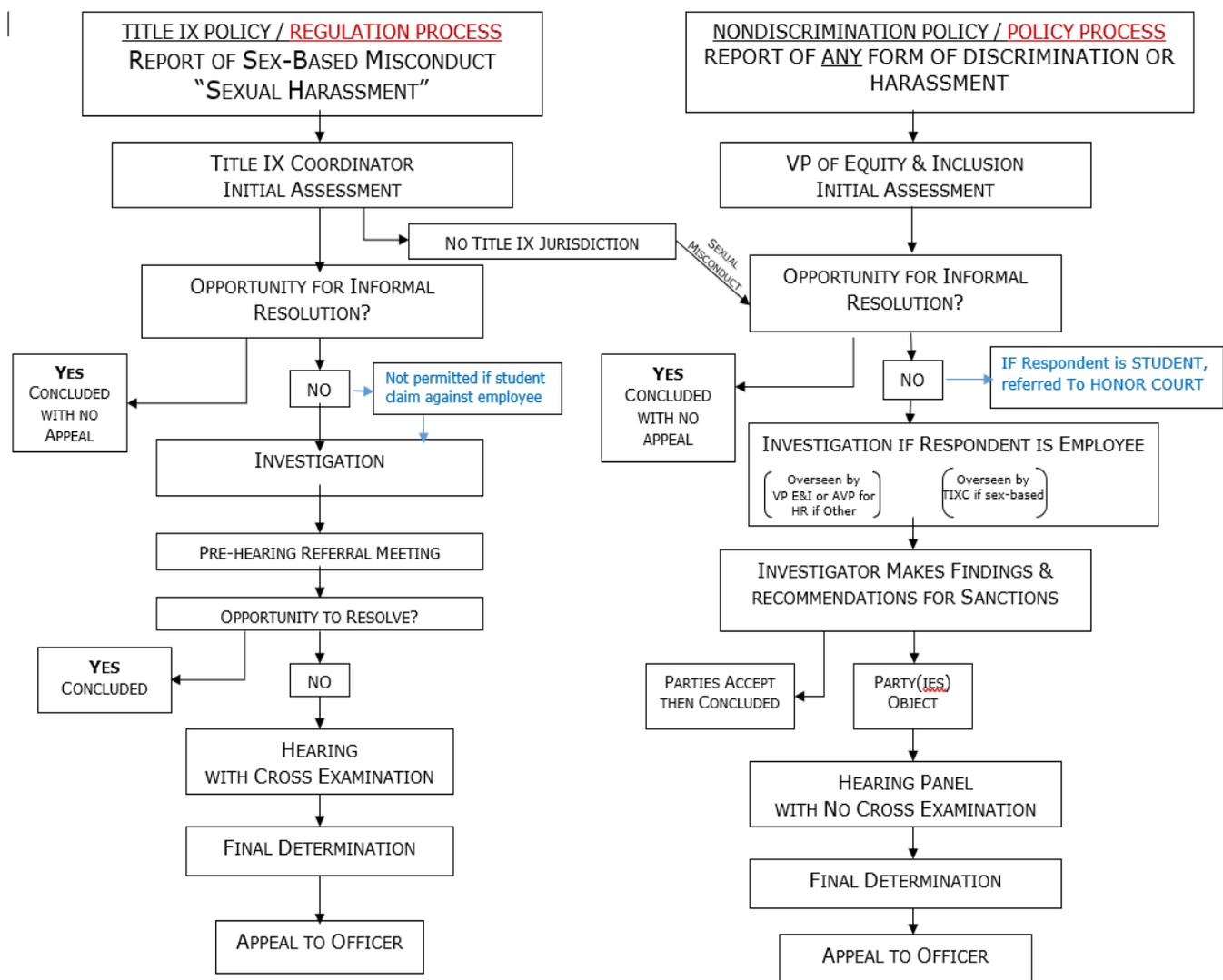
2. Rationale for Policy

Agnes Scott is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment, sexual misconduct, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity,

Agnes Scott has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation. Agnes Scott values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

3. Applicable Scope

A core purpose of this policy is the prohibition of sexual harassment, **sexual misconduct**, and retaliation within the Agnes Scott community, and to provide support when it occurs. When an alleged violation of this policy is reported, the allegations are subject to resolution using Agnes Scott’s “Regulation Process” or “Policy Process,” as determined by the Title IX Coordinator, and as detailed below. **The Nondiscrimination Policy/Policy Process illustrated by the right column in this flowchart is highlighted in blue throughout this overarching policy.**



When the Respondent is a member of Agnes Scott community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of Agnes Scott community. This community includes, but is not limited to, students,² student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. This policy may also apply to patterns and campus climate.

4. Title IX Coordinator

Marti Fessenden serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Agnes Scott's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, sexual misconduct, and retaliation prohibited under this policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Agnes Scott President, Leocadia I Zak, president@agnesscott.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to Agnes Scott President Leocadia I Zak, president@agnesscott.edu or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to anyone on the Title IX Team:

Marti Fessenden
Title IX Coordinator
President's Office
Location/Address: Hopkins Hall 207, 141 E. College Ave, Decatur, Georgia 30030
(404) 471-6547
Email: MFessenden@agnesscott.edu
Web: <https://www.agnesscott.edu/wellnessandsafety/title-ix-sexual-misconduct-policy.html>

Lucero Aradillas
Deputy Title IX Coordinator for Students
Director of Diversity Education and Training
Location/Address: Alston Campus Center 307, 141 E. College Ave, Decatur, Georgia 30030
(404) 471-6466
Email: LAradillas@agnesscott.edu

² For the purpose of this policy, Agnes Scott defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the Agnes Scott.

Karen Gilbert
Deputy Title IX Coordinator for Employees
Associate Vice President for Human Resources
Location/Address: Hopkins Hall 214, 141 E. College Ave, Decatur, Georgia 30030
(404) 471-6435 Email: KGilbert@agnesscott.edu

Officials with Authority

Agnes Scott has determined that the following administrators are Officials with Authority to address sexual harassment, sexual misconduct and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of Agnes Scott:

- Karen Goff, Vice President for Student Affairs and Dean of Students
KGoff@agnesscott.edu / Agnes Scott Hall 101 / (404) 471-6449
- Tomiko Jenkins, Senior Associate Dean of Students
TJenkins@agnesscott.edu / Alston Campus Center 226 / (404) 471-6075
- Robert Sparks, Director of Student Conduct and Community Standards
RSparks@agnesscott.edu / Agnes Scott Hall 123 / (404) 471-5409
- Jessica Foxworth, Director of Residence Life
JFoxworth@agnesscott.edu / Winship Hall G42 / (404) 471-6327
- Markesha Henderson, Director of Athletics
MHenderson@agnesscott.edu / Woodruff Physical Activity Building / (404) 471-5412

Required Reporters

Agnes Scott also has classified employees, including Officials with Authority, as Required Reporters of any knowledge they have that a member of the community is experiencing sexual harassment, sexual misconduct and/or retaliation.

Section 18 below on Required Reporting details which employees have this responsibility and their duties.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

For complaints involving employees: [Equal Employment Opportunity Commission](https://www.eeoc.gov/how-file-charge-employment-discrimination) [<https://www.eeoc.gov/how-file-charge-employment-discrimination>] (EEOC) ³

³ EEOC has jurisdiction over Title VII and Title IX employment claims. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate your local office's contact info.

7. Notice/Complaints or Reports of Sexual Harassment and/or Retaliation

Notice or complaints of sexual harassment, sexual misconduct and/or retaliation may be made using any of the following options:

- 1) File a *Complaint* with, or give verbal notice to, the Title IX Coordinator, Deputy Title IX Coordinators or Officials with Authority (contact information above). Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- 2) Report online, using the reporting form posted at: <https://www.agnesscott.edu/wellnessandsafety/title-ix-sexual-misconduct-policy.html>. Anonymous reports are accepted but can give rise to a need to investigate. Agnes Scott tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Agnes Scott respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Agnes Scott to discuss and/or provide supportive measures.

A Complainant's or Reporter's online report will not be considered by the College as a formal Notice, Complaint, or request to initiate a Formal Grievance Process under either the Regulation Process or Adjudication under the Policy Process. An online report will be considered a Report, after which the College will contact the Complainant or Reporter to provide supportive measures and explain options available under the College's Regulation Process and/or Policy Process. The Complainant may at that time initiate a formal Complaint.

- 3) File a *Report* with, or give verbal notice, to any Agnes Scott *Required Reporter*. A *Report* will not constitute a formal *Notice, Complaint, or request to initiate a Formal Grievance Process or Adjudication Process*. The individual filing or communicating a *Report* may initiate a *Complaint (formal)* at any time.

A Formal Complaint means a document submitted or signed by the Complainant or by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Agnes Scott investigate the allegation(s).

A Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document submitted or signed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Agnes Scott) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Complaint, and requests that Agnes Scott investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that a Formal Complaint is intended, and that it is filed correctly.

8. Supportive Measures

Agnes Scott will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment, sexual misconduct and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Agnes Scott's education program or activity, including measures designed to protect the safety of all parties or Agnes Scott's educational environment, and/or deter sexual harassment, misconduct and/or retaliation. Supportive measures will be provided in a non-discriminatory manner.

The Title IX Coordinator or designee promptly makes supportive measures available to the Complainant upon receiving notice or a Complaint. At the time that supportive measures are offered, Agnes Scott will inform the Complainant, in writing, that they may file a formal Complaint with Agnes Scott either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Agnes Scott will maintain the privacy of the supportive measures, provided that privacy does not impair Agnes Scott's ability to provide the supportive measures. Agnes Scott will act to ensure as minimal an academic / occupational impact on the parties as possible.

Agnes Scott will implement measures in a way that does not unreasonably burden the other party. Supportive measures for a Respondent typically means that the college will ensure that respondents are not subject to penalty or discipline without first assuring that the rights of fairness and in the nature of due process under the Title IX Regulations are accorded. (34 CFR §106.45).

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact directives/orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus

Violations of no contact directives/orders will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal (Applicable to Regulation Process)

Agnes Scott can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is coordinated by the Title IX Coordinator, working with individuals charged with risk assessment using standard objective risk assessment procedures. If Agnes Scott constitutes a Behavioral Intervention Team [also known as BIT/BAT/TAT/CARE, etc.], such assessment will be conducted by the Behavioral Intervention Team.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the

option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. While not a strict time frame, a request made within 48 hours would be considered timely. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator, in consultation with other campus officials, has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

Agnes Scott will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

Interim Measures
(Applicable to Nondiscrimination Policy / Policy Process)

For Sexual Misconduct matters not governed by Title IX or its applicable regulations (34 CFR Part 106 – referred to by the college as the Regulation Process), the College may deem that interim measures are necessary to restore or preserve access to Agnes Scott's education program or activity, including measures designed to protect the safety of all parties or Agnes Scott's educational environment, and/or deter sexual harassment, misconduct and/or retaliation.

Agnes Scott will maintain the privacy of the interim measures, provided that privacy does not impair Agnes Scott's ability to implement the measures. Agnes Scott will act to ensure as minimal an academic / occupational impact on the parties as possible.

Agnes Scott will implement interim measures in a way that does not unreasonably burden the other party.

These interim measures may include, but are not limited to:

- All Supportive Measures listed above
- Interim/Temporary administrative leave
- Interim/Temporary suspension
- Interim/Temporarily imposed leave of absence
- Interim/Temporary physical ban from campus
- Interim/Temporary ban from organization, athletic or program participation
- Any other actions deemed appropriate by the Title IX Coordinator

The interim measures may be modified, withdrawn, or made permanent as remedies or sanctions once the Policy Process reaches a resolution, by revision deemed reasonable by the Title IX Coordinator, or, by written agreement of the parties prior to resolution.

10. Promptness

All allegations are acted upon promptly by Agnes Scott once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Agnes Scott will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Agnes Scott procedures will be delayed, Agnes Scott will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Every effort is made by Agnes Scott to preserve the privacy of Reports and Complaints.⁴ Agnes Scott will not share the identity of any individual who has made a Report or Complaint of misconduct, harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

⁴ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Agnes Scott employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in Agnes Scott’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in Agnes Scott’s Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Agnes Scott has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see pages 18-19 below. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

Agnes Scott reserves the right to determine which Agnes Scott officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Report or Complaint, including but not limited to: Division of Student Affairs, Agnes Scott Police, Academic Advising and any threat assessment team. Officials and faculty necessary to accomplish supportive measures, interim measures or resolutions may also be told limited information.

Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers/Hearing Facilitators, Appeal Officers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as feasible to preserve the parties' rights and privacy.

Agnes Scott may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and required reporting are addressed more specifically [below](#).

12. Title IX Regulation Jurisdiction of Agnes Scott

This policy applies to the education program and activities of Agnes Scott, to conduct that takes place on the campus or on property owned or controlled by Agnes Scott, at Recipient-sponsored events, or in buildings owned or controlled by Agnes Scott's recognized student organizations. The Respondent must be a member of Agnes Scott's community in order for its policies to apply.

This policy also can be applicable to the effects of off-campus misconduct (including online conduct) that effectively deprives someone of access to Agnes Scott's educational program. ([Agnes Scott may also extend jurisdiction, pursuant to the Nondiscrimination Policy / Policy Process, to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects an Agnes Scott interest.](#))

Regardless of where the conduct occurred, Agnes Scott will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Agnes Scott interest includes:

- a. Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Agnes Scott.

If the Respondent is unknown or is not a member of Agnes Scott community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Agnes Scott's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or Deputy Title IX Coordinators.

In addition, Agnes Scott may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Agnes Scott property and/or events.

All vendors serving Agnes Scott through third-party contracts are subject to the policies and procedures of their employers. Additionally, the College may require understanding and adherence to nondiscrimination policies.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to Agnes Scott where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Sexual Misconduct – Jurisdiction Outside of Non-Title IX Regulations **(Nondiscrimination Policy / Policy Process)**

For Sexual Misconduct matters prohibited by Agnes Scott policies, but not governed by Title IX (the Regulation Process) and its implementing regulations, the College may take jurisdiction pursuant to this policy or other policies in order to equitably and fairly provide supportive/interim measures, investigations, adjudications, resolutions (formal or informal) and/or remedies/sanctions. *This Policy Process will be provided in concert with the companion *Sexual Misconduct and Other Discrimination, Harassment Policy*.

13. Time Limits on Reporting

While there is no time limitation on providing Notice/Complaints or Reports to the Title IX Coordinator, significant passage of time limits the ability of the college to provide meaningful resolution or remedies. For instance, if the Respondent is no longer subject to Agnes Scott's jurisdiction, or witnesses, and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on Notice/Complaints or Reports significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Agnes Scott will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. By consent of the parties, the policy in place at the time of investigation, adjudication and/or resolution may be applied.

14. Online Sexual Harassment and/or Retaliation

The policies of Agnes Scott are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Agnes Scott's education program and activities or use Agnes Scott networks, technology, or equipment.

Although Agnes Scott may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Recipient, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-

based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of Agnes Scott community.

Off-campus harassing speech by employees, whether online or in person, may be addressed by Agnes Scott only when such speech is made in an employee's official or work-related capacity.

15. Policy on Nondiscrimination

Agnes Scott College does not discriminate on the basis of race, color, national origin, religion, sexual orientation, gender identity, gender expression, age or disability in the recruitment and admission of any student and, in addition, does not discriminate on the basis of gender in the recruitment and admission of students to its graduate and post-baccalaureate programs. This nondiscriminatory policy also applies to all the rights, privileges, programs, and activities generally accorded or made available to students at the college and to the administration of educational policies, scholarship and loan programs and all other programs administered by the college.

This policy will be enforced in conformance with Agnes Scott's commitment to nondiscrimination.

The corresponding Agnes Scott College **Sexual Misconduct and Other Discrimination, Harassment Policy* is intended to fully address all prohibited forms of discrimination, harassment, and violence.

16. Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR) and the Equal Employment Opportunity Commission (EEOC) regard Sexual Harassment as an unlawful discriminatory practice.

Agnes Scott has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of Agnes Scott,
 - b. conditions⁵ the provision of an aid, benefit, or service of Agnes Scott,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment / *Denial of Access*:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to Agnes Scott's education program or

⁵ Implicitly or explicitly.

activity.⁶

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act⁷ directed against another person⁸,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.⁹

b) Sex Offenses, Non-forcible:

- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,

⁶ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁷ Sexual acts include:

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 Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person’s will (non-consensually), or
- not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of 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,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁸ This would include having another person touch you sexually, forcibly, or without their consent.

⁹ This definition set is not taken from SRS/NIBRS verbatim. Non-material revisions include: Complainant has been substituted for “victim,” references to his/her have been removed, “private body parts” has been defined, the unnecessary term “unlawfully” has been removed, and, language clarifying that Agnes Scott interprets “against the person’s will” to mean “non-consensually” has been added.

- 3) within the degrees of relation as prohibited by Georgia law.
 - Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16.
- 4) Dating Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Georgia, or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Georgia.

-To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
 - a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.

For the purposes of this definition—

 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Agnes Scott reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

c. Force, Coercion, Consent, and Incapacitation¹⁰

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Agnes Scott to determine whether its policy has been violated. The existence of consent is based on

¹⁰ Georgia law does not define consent but defines "without consent" as a circumstance in which "a person whose concurrence is required has not, with knowledge of the essential facts, voluntarily yielded to the proposal of the accused or of another." The state law definition of lack of consent, which is applicable to criminal prosecutions for sex offenses in Georgia but may differ from the definition used on campus to address policy violations. This distinction is included for Clery/VAWA Sec. 304 compliance purposes.

the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process in any capacity, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Agnes Scott will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Agnes Scott and any member of Agnes Scott's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 and procedure.

Filing a complaint within the Policy Process could be considered retaliatory if those charges could be applicable under the Regulation Process, when the Policy Process charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within the Regulation Process that is not provided by the Policy Process. Therefore, Agnes Scott vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate Regulation or Policy Process.

The exercise of rights under the principles of free thought and expression does not constitute retaliation unless there is evidence, direct or indirect, of a retaliatory intent.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a any proceeding under this policy and companion procedures does not constitute retaliation, provided

that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

18. Required Reporting

All Agnes Scott employees (faculty and staff (non-student) who are not union members) are expected to report actual or suspected sexual misconduct, sexual harassment or retaliation to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and required reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Required Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Agnes Scott for a Complainant, Reporter or third-party:

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus chaplain working within the scope of their licensure or ordination
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional)
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors [Employee Assistance Program for employees] are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Confidential resources who receive reports within the scope of their confidential roles will timely submit anonymous statistical information solely for Clery Act purposes unless they believe that providing such information would be harmful to the client, patient, or parishioner.

b. Anonymous Notice to Required Reporters

At the request of a Complainant, notice may be given by a Required Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Required Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Required Reporter maintain the Complainant's anonymity, the Required Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Required Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by Agnes Scott to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice limits Agnes Scott's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Required Reporter, but all other details must be shared with the Title IX Coordinator. Required reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

c. Required Reporters and Formal Notice/Complaints

All non-union employees of Agnes Scott (not student employees), with the exception of those who are designated as Confidential Resources, are Required Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Required Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Agnes Scott.

Supportive measures may be offered as the result of such disclosures without formal Agnes Scott action.

Failure of a Required Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of Agnes Scott policy and can be subject to disciplinary action for failure to comply.

When a Required Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Agnes Scott is technically not on notice when a harasser is also a Required Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Required Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

19. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Agnes Scott proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance or adjudication process upon completion of a risk assessment.

The Title IX Coordinator's decision could be based on results of a risk assessment or other factual analysis that show a compelling risk to health and/or safety that requires Agnes Scott to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Agnes Scott's ability to pursue a Formal Grievance Process or [Adjudication Process](#) fairly and effectively.

In the Regulation Process, when the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. **If the college proceeds under the Policy Process, the college will be the Complainant.*

When Agnes Scott proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that Agnes Scott's ability to remedy and respond to notice likely will be limited if the Complainant does not want Agnes Scott to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing Agnes Scott's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Agnes Scott to honor that request, Agnes Scott will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. While there is no strict time limitation within which a Complainant must pursue a formal complaint, the meaningful opportunity for resolve, remedies, and sanctions decreases with the passage of time. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

20. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Agnes Scott must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Agnes Scott will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Agnes Scott policies.

22. Amnesty for Complainants and Witnesses

Agnes Scott community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Agnes Scott officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of Agnes Scott community that Complainants choose to report misconduct to Agnes Scott officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Agnes Scott maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to Public Safety).

Agnes Scott maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, Agnes Scott may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

Employees: Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Agnes Scott officials.

Agnes Scott may, at its sole discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis. Amnesty will be considered and/or provided in a non-discriminatory manner.

23. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,¹¹ which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, public safety officers, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

**COMMON PROCESS PROVISIONS FOR
ALLEGED VIOLATIONS OF THE TITLE IX SEXUAL HARASSMENT REGULATIONS
(REGULATION PROCESS)
and
ALLEGED VIOLATIONS OF THE SEXUAL MISCONDUCT POLICY
(NONDISCRIMINATION POLICY / POLICY PROCESS)**

1. Overview

Agnes Scott will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator,¹² Official with Authority or Required Reporter.

With the exception of the scope of the Investigator’s duties and hearing protocols, the procedures below largely apply to both the Regulation Process and the Policy Process. Qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, or faculty members will be resolved through the Regulation Process.

Allegations of Sexual Misconduct that do not satisfy jurisdictional requirements of the Title IX regulations, will be resolved through the Policy Process.

Where there are variations between the two processes and procedures, they are noted.

**If a dismissal occurs under this Regulation Process, please see [\[link\]](#) for a description of the procedures that may be applicable to the resolution of such sexual misconduct offenses, known as the “Policy Process.”*

¹¹ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

¹² Anywhere this procedure indicates “Title IX Coordinator,” Agnes Scott may substitute a trained designee.

The Policy Process can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within the Regulation Process, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps Agnes Scott needs to take.

The Title IX Coordinator will initiate at least one of three initial responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint) or by request if it is apparent that Title IX jurisdiction is not satisfied and the Complainant seeks only the Policy Process (*which does not require a formal complaint); and/or
- 3) A Regulatory Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint seeking the Regulation Process), or a referral to an *Adjudication*, to include an investigation and possible hearing in the Policy Process.

Agnes Scott uses the Regulatory Formal Grievance Process to determine whether the Title IX regulation-related Policy has been violated. If so, Agnes Scott will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

*Agnes Scott uses the Policy Process / Adjudication Process to determine whether the Sexual Misconduct Policy (addressing misconduct not covered by the Title IX Regulations) has been violated.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator¹³ engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

¹³ If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. *If the matter concerns Sexual Misconduct, it may be referred to the Policy Process. Dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Agnes Scott’s authority to address a complaint with an appropriate process and remedies.

a. Dismissal (Mandatory and Discretionary)¹⁴

Note: If a complaint is dismissed under this Title IX Regulation Policy, the claimant can consider pursuit of the same claim under the Policy Process (Sexual Misconduct / Nondiscrimination Policy).

Agnes Scott must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Agnes Scott (including buildings or property controlled by recognized student organizations), and/or Agnes Scott does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Agnes Scott.¹⁵

Agnes Scott may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or

¹⁴ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

¹⁵ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

- 2) The Respondent is no longer enrolled in or employed by Agnes Scott; or
- 3) Specific circumstances prevent Agnes Scott from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Agnes Scott will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

4. Counterclaims

Agnes Scott is obligated to ensure that the grievance process is not abused for retaliatory purposes. Agnes Scott permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, impermissibly made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance or adjudication procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

The parties may each have an Advisor¹⁶ of their choice present with them for all meetings, interviews, and hearings within the resolution process or *policy process*, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁷

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of Agnes Scott community.

If the matter will be resolved through the Title IX Regulation Process, the Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Agnes Scott, the Advisor will be familiar with Agnes Scott's resolution process.

¹⁶ This could include an attorney, advocate, or support person. The law and policy permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

¹⁷ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

If the parties choose an Advisor from outside the pool of those identified by Agnes Scott, the Advisor may not have been educated by Agnes Scott and may not be familiar with Agnes Scott policies and procedures.

**If the matter will be resolved through the Policy Process / Adjudication Process, the parties are entitled to the Advisor of their choice, but Agnes Scott will not offer to provide or assign an Advisor.*

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Parties participating in the *Regulation Process/Formal Grievance Process* must have an Advisor at the hearing to cross-examine the other party.

**Parties participating in the Policy Process/Adjudication Process may have an Advisor at the hearing, but an advisor is not required. (*and no direct cross-examination is permitted in the Policy/Adjudication Process)*

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Agnes Scott cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Agnes Scott is not obligated to provide an attorney.

c. Advisors in Regulation Process Hearings/Agnes Scott-Appointed Advisor [Does not apply to the Policy / Adjudication Process]

Under Title IX regulations, a form of direct questioning (cross-examination) is permitted during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a Regulation Process hearing, Agnes Scott will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor in a Regulation Process hearing. If the party's Advisor will not conduct questioning, Agnes Scott will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself.

Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the Regulation Process and/or Policy Process hearing.

*In a Policy Process hearing, the Advisor will not be permitted to directly question the other party or witnesses. *The parties or Advisors may provide written questions to the Decision-maker/Panel members to be asked of the other party or witnesses.*

d. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Agnes Scott cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Agnes Scott is not obligated to provide an attorney.

e. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting will be allowed at the discretion of the Title IX Coordinator and solely for the purpose to clarify and understand their role and Agnes Scott's policies and procedures.

f. Advisor Violations of Agnes Scott Policy

All Advisors are subject to the same Agnes Scott policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Agnes Scott officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) *except during a Regulation Process hearing proceeding, during cross-examination.*

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

g. Sharing Information with the Advisor

Agnes Scott expects that the parties may wish to have Agnes Scott share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

A party may specify in writing, with signature, that Agnes Scott also is also authorized to share such information directly with their Advisor. The signed consent may be emailed or delivered in person to the Title IX Coordinator. Without a signed consent, Agnes Scott will not share information directly with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Agnes Scott will not comply with that request because of its obligation to use official communication with students and employees.

h. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Agnes Scott. Agnes Scott may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Agnes Scott's privacy expectations.

i. Expectations of an Advisor

Agnes Scott generally expects an Advisor to adjust their schedule to allow them to attend Agnes Scott meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Agnes Scott may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

j. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) or Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a signed consent for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

k. Assistance in Securing an Advisor (primarily for the Regulation Process)

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Dekalb Volunteer Lawyers Foundation (<https://dekalbprobono.org/>)
- The Victim Rights Law Center (<http://www.victimrights.org>),
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>]

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Agnes Scott policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. **Agnes Scott encourages parties to discuss any sharing of information with their Advisors before doing so.**

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, negotiated resolution etc., usually but not always before a formal investigation takes place; see discussion in b., below.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution for a matter governed by the Title IX regulations, a Complainant needs to submit a formal complaint, as defined above. **A formal complaint is not required before Informal Resolution may be sought in matters outside the Title IX regulations that fall within the Policy Process.* A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process in the Regulation Process or Adjudication in the Policy Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process or Adjudication Process.

Prior to implementing Informal Resolution, Agnes Scott will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Agnes Scott.

Agnes Scott will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

b. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed-upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Agnes Scott are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the

accepted finding that the Respondent is in violation of Agnes Scott policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process or Adjudication Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

d. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Agnes Scott. Negotiated Resolutions are not appealable.

7. Grievance or Adjudication Process Pool (Investigators, Advisors, Resolution Facilitators, Decision-makers, Panel Members, Hearing Facilitators, Appeal Officers)

The Formal Grievance Process and Adjudication Process rely on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of minor students, employees, prospective students, and prospective employees.

The list of Pool members and titles will be posted at a later date.

a. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the one of the following roles (per complaint), at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in facilitation and/or resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with the initial assessment
- To investigate complaints
- To serve as an Advisor
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Officer

b. Pool Member Appointment

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. Members of the Pool are typically trained in a variety of skill sets and can rotate among the different roles listed above in different cases.

c. Pool Member Training

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of Agnes Scott’s Sexual Harassment and Sexual Misconduct Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Agnes Scott with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Training is also provided for Advisors (who may be Agnes Scott employees). All Pool members may be required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted [here](#) and may be found by link from the college’s Title IX webpage.

d. Pool Membership

The Pool typically, but not exclusively, includes:

- 2 or more members of the Academic Affairs administration and/or faculty
- 3 or more members of the administration/staff
- At least 1 representative from Human Resources
- External, trained third-party neutral professionals may also be used to serve in pool roles

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

8. Formal Grievance and Adjudication Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process [or Adjudication Process](#). This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Agnes Scott presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Agnes Scott's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Agnes Scott's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to Agnes Scott's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Agnes Scott records, or emailed to the parties' Agnes Scott email account. Email will be the preferred means of notification. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

Agnes Scott will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator or designee will assign an internal and/or external (third-party) trained Investigator (Pool member) to conduct a prompt, thorough, fair, and impartial investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

The college retains the authority and has the sole discretion in determining when to assign an internal and/or external (third-party) Investigator / Pool member.

11. Impartiality

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s), Appeal Officer may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with any Deputy Title IX Coordinator for whom no interest no bias exists.

The Formal Grievance or Adjudication Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Agnes Scott operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Agnes Scott will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

Agnes Scott may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions, and /or national emergencies which might include civil unrest, natural disasters or an epidemic or pandemic.

Agnes Scott will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. Agnes Scott will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Agnes Scott will implement supportive measures as deemed appropriate.

Agnes Scott action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence (non-duplicative); and identifying sources

of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s), but not in every case, the following steps if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant (nonduplicative) witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Agnes Scott does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor). *The*

draft investigation report must be kept strictly confidential and will be shared contingent upon a non-disclosure cleryrequirement.

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) may share the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report. *The final report must be kept strictly confidential and will be shared contingent upon a non-disclosure requirement.*

In the Regulation Process, the Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.

**In the Policy Process, the Investigator(s) gather, assess, and synthesize evidence, to draw conclusions, engage in policy analysis, and provide recommendations as part of their report.*

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Agnes Scott are expected to cooperate with and participate in Agnes Scott's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Agnes Scott will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s). If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

18. Referral for Hearing

Pre-referral Meeting: Once the final investigation report is shared with the parties, the Title IX Coordinator will meet with the parties to answer questions, further explain Informal Resolution options and the hearing process, discuss allowable remedies and sanctions in the event there is a final determination of responsibility and provide other relevant information. Advisors may participate in the pre-referral meeting and the parties may decline to participate without consequence or impact on their rights in the Formal Grievance Process or Adjudication Process. The discussion among the parties and Title IX Coordinator is confidential and under no circumstance will the substance of the conversation be shared with anyone involved with the Formal Grievance or Adjudication Process without express consent of the parties. By way of example only, if a negotiated resolution (with or without sanctions) is considered by the parties and Agnes Scott, neither the fact of a potential negotiated resolution nor its terms will be disclosed to anyone involved in the Formal Grievance or Adjudication Process without express consent of the parties. This and other procedures are in place to ensure that no influence is placed on the Decision-maker(s), Panel Members or Appeal Officers who must act independently and fairly based solely upon the evidence.

In the Policy Process / Adjudication Process, a hearing is in the nature of an appeal, following the opportunity for the parties to Object to the Final Investigation Report. As explained in the corresponding **Sexual Misconduct and Other Discrimination, Harassment Policy, the first level of Adjudication is at the completion of the investigation. The parties may accept the Final Investigation Report which includes findings, conclusions, and recommended sanctions. If the parties Object to portions or all of the Final Investigation Report, they are afforded a hearing.*

Provided that the complaint is not resolved through the Pre-referral Hearing, Informal Resolution, and/or a dismissal has not occurred, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending upon the context and nature of the alleged misconduct.

19. Hearing and Decision-Maker Composition

Agnes Scott will designate a single Decision-maker or a panel from the Pool (internal or external), at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the panel members will be appointed as Chair or Hearing Facilitator (“Facilitator”) by the Title IX Coordinator.

For purposes of responsibilities, “Chair,” “Hearing Facilitator” or “Facilitator” may be used interchangeably. Any distinction in responsibility is noted.

For a hearing in the Title IX Formal Grievance Process (Regulatory Process), the college will appoint a sole external Decision-maker. The college will ensure that the sole external Decision-maker has had the requisite training and relevant experience.

The Decision-maker(s) will not have had any previous involvement with the investigation. Depending upon

feasibility and availability, the Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason. If a member of the panel cannot complete their hearing service, and an alternate did not sit in, the panel may proceed with a reduced number even if the “panel” now consists of a single Decision-maker.

Those who have served as Investigators may be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair/Facilitator or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) [**or Panel in an Adjudication Process*] determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming Agnes Scott considers progressive discipline in matters. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached. [**or for the consideration of the Panel in an Adjudication Process*]

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair/Facilitator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair/Facilitator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Agnes Scott will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.¹⁸
- An invitation to each party to submit to the Chair/Facilitator an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

*Hearings requested following an Investigation in the *Policy Process / Adjudication Process* will require less notice detail than described above in accordance with the corresponding *Nondiscrimination Policy*.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Agnes Scott and remain within the 60-90 business day goal for resolution.

A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair/Facilitator at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair/Facilitator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair/Facilitator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Chair/Facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

¹⁸ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), or have proffered a written statement or answered written questions, unless all parties and the Chair/Facilitator assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair/Facilitator do not assent to the admission of evidence newly offered at the hearing, the Chair/Facilitator may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) *or Panel member(s) at least five (5) business days in advance of any hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair/Facilitator at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair/Facilitator.

24. Pre-Hearing Meetings

The Chair/Facilitator *may* convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair/Facilitator can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair/Facilitator must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair/Facilitator, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair/Facilitator will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair/Facilitator may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair/Facilitator may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

25. Hearing Procedures [Applicable for the Regulation Process and Policy Process]

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment, sexual misconduct and/or retaliation and may also hear and make determinations on any

additional alleged policy violations that have occurred in concert with the sexual harassment, sexual misconduct and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Decision-maker, Chair/Facilitator, additional panelists (if any), the Investigator(s) who conducted the investigation, the parties or at least one organizational representative when an organization is the Respondent, Advisors to the parties, any called witnesses, and/or anyone providing authorized accommodations or assistive services. The Title IX Coordinator or designee may also attend solely to provide procedural or policy support.

The Chair or Facilitator, in consultation as necessary, will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) *or Panel member(s) and the parties and will then be excused.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair/Facilitator explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest if new information potentially demonstrating bias has come to light. The Chair/Facilitator will rule on any such challenge unless the Chair/Facilitator is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair or hearing facilitator then conducts the hearing accordingly. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the Chair or a non-voting hearing facilitator appointed by the Title IX Coordinator. The Chair or hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Investigator Presents the Final Investigation Report

Following explanation of procedures and introductions, the Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not. The Investigator(s) summary can be brief with reference to the report for ease of the Decision-maker(s) and parties and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

In the Title IX Regulation / Formal Grievance Process, neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**In the Non-Title IX Policy / Adjudication Process, the Investigator may be asked about their opinions on credibility, recommended findings, or determinations.*

29. Testimony and Questioning / Formal Grievance Proceeding [REGULATION PROCESS ONLY]

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair / Facilitator. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker or Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision-maker or Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Decision-maker or Chair to consider it (and state it if it has not been stated aloud), and the Decision-maker or Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker or Chair may invite explanations or persuasive statements regarding relevance with the Advisors, only if the Decision-maker Chair so chooses. The Decision-maker or Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker or Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker or Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker or Chair has final say on all questions and determinations of relevance. The Decision-maker or Chair may consult with legal counsel on any questions of relevance/admissibility. The Decision-maker or Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker or Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair or Facilitator may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker or Chair should not permit irrelevant questions that probe for bias.

30. Refusal to Submit to Cross-Examination During the Formal Grievance Proceeding [REGULATION PROCESS ONLY] and Inferences

Parties should note that their participation in the hearing and questioning at the hearing is necessary for their statement to be considered by the Decision-maker(s). If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not

precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.¹⁹

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. The college may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by the party. (see 85 Fed. Reg. 30026, 30361 May 19, 2020).

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Agnes Scott's established rules of decorum for the hearing, Agnes Scott may require the party to use a different Advisor. If a recipient-provided Advisor refuses to comply with the rules of decorum, Agnes Scott may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

31. Recording Hearings

Hearings (but not deliberations) are recorded by Agnes Scott for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of Agnes Scott will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

32. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. If the Chair is a member of the Panel or a Decision-maker, the Chair will participate in deliberations. The Hearing Facilitator may attend deliberations but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair/Facilitator or Title IX Coordinator (or designee) will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) or Panel will review the statements and any pertinent conduct history provided by appropriate conduct/discipline administrator and will determine the appropriate sanction(s)[in consultation with other appropriate administrators, as necessary].

The Decision-maker(s) or Chair/Facilitator will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the

¹⁹ Noted in the preamble (p. 30349 and pg. p. 1214 of the 2083 pg. version) to the Title IX regulations.

evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair/Facilitator (or designee) to prepare a Notice of Outcome. The Notice of Outcome may be reviewed by outside legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Agnes Scott records, or emailed to the parties' Recipient-issued email or otherwise approved account. Email will be the preferred means of communication. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Agnes Scott from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Agnes Scott is permitted to share such information under state or federal law; any sanctions issued which Agnes Scott is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Agnes Scott's educational or employment program or activity, to the extent Agnes Scott is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Agnes Scott to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

34. Rights of the Parties

The extensive rights of the Parties are stated throughout this detailed Policy.

35. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual Harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation

- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The following are the usual sanctions²⁰ that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Agnes Scott policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Recipient-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Recipient. [insert transcript notation here if applicable].
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Recipient-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript [subject to any applicable expungement policies.]
- *Temporary Delay of Diploma*: Agnes Scott may temporarily delay the provision of a student's diploma for a limited period of time to enable expedited completion of a Formal Grievance Process if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: Agnes Scott reserves the right to revoke a degree previously awarded from Agnes Scott for fraud, misrepresentation, and/or other violation of Agnes Scott policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Agnes Scott registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, Agnes Scott may assign any other sanctions as deemed appropriate.

b. Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*

²⁰ Agnes Scott policies on transcript notation will apply to these proceedings.

- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, Agnes Scott may assign any other responsive actions as deemed appropriate.

36. Withdrawal or Resignation While Charges Pending

a. Students: If allegations are pending against a student, or during on ongoing Formal Grievance Process, Agnes Scott may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process but not withdraw, the process proceeds absent their participation to a reasonable resolution. If a student permanently withdraws with an allegation pending, the resolution process ends as Agnes Scott no longer has disciplinary jurisdiction over the withdrawn student.

However, Agnes Scott will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Agnes Scott. Such exclusion applies to all campuses of Recipient. A hold will be placed on their ability to be readmitted. They may also be barred from Agnes Scott property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Agnes Scott unless and until all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Agnes Scott no longer has disciplinary jurisdiction over the resigned employee.

However, Agnes Scott will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Agnes Scott, and the records retained by the Title IX Coordinator will reflect that status.

All Agnes Scott responses to future inquiries regarding employment references for that individual may include that the former employee is not eligible for rehire and/or that they resigned during a pending disciplinary matter.

37. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome.

The Title IX Coordinator will designate a single Appeal Officer. No Appeal Officer will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Officer first for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) / **Panel Member(s)** had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer (or designee) will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be emailed and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved that involves them. All responses will be forwarded by the Decision-maker (or designee) to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Officer will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions will apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Agnes Scott is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Agnes Scott is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person,

mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Agnes Scott may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Officer(s) to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Agnes Scott or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment, *sexual misconduct* and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments

- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by Agnes Scott to the Respondent to ensure no effective denial of educational access.

Agnes Scott will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Agnes Scott's ability to provide these services.

39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including Appeal Officers(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Agnes Scott and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

40. Recordkeeping

Agnes Scott will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Agnes Scott's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Agnes Scott will make these training materials publicly available on Agnes Scott's website. and
7. Any actions, including any supportive measures (unless the Complainant objects), taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to Agnes Scott's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, reasons why such a response was not clearly unreasonable in light of the known circumstances.

Agnes Scott will also maintain any and all records in accordance with state and federal laws.

41. Disabilities Accommodations in the Resolution Process

Agnes Scott is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Agnes Scott's resolution process.

Anyone needing such accommodations or support should contact the Office of Academic Accessibility or Karen Gilbert, Associate Vice President for Human Resources (if an employee), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

42. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing Sexual Harassment and retaliation as interpreted under the Title IX Regulations and will be reviewed and updated by the Title IX Coordinator as needed.

For Sexual Misconduct not covered by Title IX and its implementing regulations, this Policy and procedures will work in concert with the corresponding **Sexual Misconduct and Other Discrimination, Harassment Policy.*

Agnes Scott reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Regulation Process *or the Policy Process*, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

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