

**Title IX
Sexual Harassment Policy**



Delta College

Delta College developed this as an independent policy separate from the Sexual Misconduct and Gender Discrimination Policy and Procedures in order to comply with the newly-revised requirements of 20 U.S.C. 1681 and 34 CFR part 106. This policy was adapted and modified from an ATIXA model policy and is used with permission. ATIXA 2020 One Policy, Two Procedures Model: Use and Adaptation of this Model with Citation to ATIXA is permitted through a limited license to Delta College. All other rights reserved. © 2020. ATIXA.

Any questions or concerns regarding this policy should be directed to the Delta College Title IX Coordinator.

Title IX Sexual Harassment Policy



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1. RATIONALE FOR POLICY

Delta College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment and retaliation on the basis of sex.

To ensure compliance with federal, state, and local 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, Delta College has developed this policy in compliance with 20 U.S.C. 1681, "Title IX", including the revisions of 34 CFR part 106. Delta College policies are committed to providing prompt, fair, and impartial processes for those involved in an allegation of discrimination, harassment or retaliation on the basis of sex.

Delta College 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.

2. DEFINITIONS

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Appellate* means the individual with the power and authority to make the decision regarding an appeal.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Education program or activity* means locations, events, or circumstances where College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- *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”).
- *Formal Grievance Process* is a method of formal resolution designated by Delta College 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).
- *Hearing Decision-Maker* refers to those who have decision-making and sanctioning authority within the College’s Formal Grievance process.
- *Investigator* means the person or persons charged by a College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of Delta College.

- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an Informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See Section 3-k Sexual Harassment below for greater detail.
- *Student* means 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 College.

3. PROCEDURES

a. APPLICABLE SCOPE

The core purpose of this policy is the prohibition of sexual harassment as defined by Title IX. Sometimes, sexual harassment involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, that harassment can encompass sexual harassment, sexual assault, stalking, dating violence, or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using this process as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Delta College community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Delta College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, and contractors. All vendors serving the College through third-party contracts are subject to these policies and procedures here within, policies and procedures of their employers, and their agreed upon bound contract with the College. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

b. TITLE IX COORDINATOR

Allie Martinez serves as the Title IX Coordinator and oversees implementation of the College's policies on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

Allie Martinez, Title IX Coordinator/Equity Officer

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c. INDEPENDENCE AND CONFLICT OF INTEREST

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. Investigators, College trained advisors, Decision-Makers and appellates 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. The Title IX Coordinator will use a checklist based on the best practices to prevent and/or evaluate any potential conflicts of interest.

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator, and Decision-Maker may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. 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 designee 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 the Delta College President, Andrea Ursuy at alnadols@delta.edu. Concerns of bias or a potential conflict of interest by any other grievance process participant should be raised with the Title IX Coordinator. In addition, reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the College President, Andrea Ursuy at alnadols@delta.edu.

Delta College 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.

d. MANDATED REPORTERS

A “Mandated Reporter” (also known as a Responsible Employee) is a College employee who has the duty to report incidents of sexual violence or other student misconduct that may violate this policy, or who a student could reasonably believe has this authority or duty. The Title IX Coordinator is also a Mandated Reporter who also has the responsibility to investigate and address sexual misconduct.

The following categories of employees are designated as the College’s Mandated Reporters:

- Administrators (including, Executive staff)
- Admissions Office/Career Planning Staff
- Athletic Director and staff (to include coaches, assistant coaches, athletic trainer, and volunteer staff)
- Coordinators and other employees at all off location sites, including in Saginaw, Bay City and Midland
- Counselors (however, if confidentiality is requested to Licensed Professional Counselors, they are not required to report to the Title IX Coordinator)
- Disability Resources Staff
- Ellucian Staff
- Faculty (including faculty teaching on-line and at off location dual enrollment sites and service learning sites)
- Faculty and staff advisors to students and /or student organizations
- Financial Aid Staff
- Finance Staff
- Human Resources Staff
- Judicial/Conduct Officer
- Law Enforcement unit employees, including Student Employees and Public Safety Staff
- Registrar Office Staff
- Student and Civic Engagement Department Staff
- Student Success Advisors and Office Staff
- Study Abroad Coordinators and all College sponsored trip leaders (to include travel within the State of Michigan and the USA)
- Supervisors (all those who are in a supervisory role)
- Title IX Advocates
- Title IX Coordinator
- Tutors and Structured Learning Assistants (SLAs)

Before a complainant reveals any information to a Mandated Reporter, the Mandated Reporter must ensure that the complainant understands the employee’s reporting obligations – and, if the complainant wants to maintain confidentiality, direct the complainant to confidential resources. Mandated Reporters will not pressure a complainant to pursue any reporting options, but will maintain neutrality.

If the complainant still wants to tell the Mandated Reporter what happened but also maintain confidentiality, the Mandated Reporter must tell the complainant that the College will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Mandated Reporter will also inform the Title IX Coordinator of the complainant’s request for confidentiality. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. Regardless if a complainant does or does not request confidentiality, a Mandated Reporter must not share any reported information with anyone outside the Title IX Coordinator or designee.

When a complainant tells a Mandated Reporter about an incident of sexual misconduct, the complainant has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Within 24 hours of seeing, knowing of or being told of any behavior prohibited by these procedures, a Mandated Reporter must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the complainant, including:

- the name(s) of the complainant
 - if the person has not experienced a sexual assault, ask them for their telephone number, address and email address
- alleged respondent(s)
- any witnesses
- plus any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a Mandated Reporter will be shared only with people responsible for handling the College's response to the report. A Mandated Reporter must not share information with law enforcement without the complainant's consent or unless the complainant has also reported the incident to law enforcement.

e. FILING A COMPLAINT

- I. Notice or complaints of alleged policy violations may be made using any of the following options:
 1. File a complaint with, or give verbal notice to, the Title IX Coordinator. 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 above in section 3-b Title IX Coordinator.
 2. Report online, using the reporting form posted at https://cm.maxient.com/reportingform.php?DeltaCollege&layout_id=6.
 3. Report to any mandated reporter, including Public Safety.
- II. Anonymous reports are accepted and can be submitted through any of the above options but can give rise to a need to investigate. Regardless of the type of report made, the College provides supportive measures to all Complainants, however, the College will be unable to do so with an anonymous report. The Complainant should not fear a loss of privacy by making a report as the Complainant is largely in control of the decision to move forward with a formal complaint. Unless there is a compelling threat to the health and/or safety of anyone within the college community, reporting carries no obligation to initiate a formal response from the College.
- III. A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Delta College 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 above in section 3-b Title IX Coordinator, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online form) that contains the Complainant's (or Title IX Coordinator's) physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. In the event that the Title IX Coordinator signs a complaint, the Title IX Coordinator is neither the complainant or a party. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

f. SUPPORTIVE MEASURES

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College 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.

Delta College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic/occupational impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

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
- Arranging education for the Delta College community
- Altering work arrangements for employees or student-employees
- Access to safety planning templates/resources
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No trespass directives
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders and no trespass directives will be investigated and adjudicated by the Title IX Coordinator.

g. EMERGENCY REMOVAL

I. Students

- a. The College 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 performed by the Title IX Coordinator and reviewed by the appropriate Decision-Maker.
- b. In all cases in which an emergency removal is imposed, the student will be given written notice of the action, including a summary of the basis for removal, 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 within three business days of receiving notice, objections to the emergency removal will be deemed waived. There is no appeal process for emergency removal decisions.

- c. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. 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.
- d. The Title IX Coordinator 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.
- e. The College 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: temporarily re-assigning a student employee, restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate 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.

II. Employees

- a. The College can act to remove an employee 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 performed by the Title IX Coordinator in conjunction with the appropriate Decision-Maker, President and the Director of Human Resources.
- b. The College will implement the appropriate emergency actions possible in light of the circumstances and safety concerns. These actions could include, but are not limited to: temporarily re-assigning an employee, restricting an employee's access to or use of facilities or equipment, or authorizing an administrative leave.

h. PROMPTNESS

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

Any time the general timeframes for resolution outlined in College procedures will be delayed, the College will provide written notice to the parties (and advisors with prior consent) 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.

i. CONFIDENTIALITY/PRIVACY

Every effort is made by the College to preserve the confidentiality of reports. The College will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, 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 Delta College policies and procedures.

The College reserves the right to determine which College 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).

The College 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. For all parties under 18, parents will be copied on all communications.

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 College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College’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 the College’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 (including Title IX) 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. Delta College has designated individuals who have the ability to have privileged communications as Confidential Resources. 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 Clery Act. Other information may be shared as required by law.

j. JURISDICTION OF THE COLLEGE

I. Jurisdiction Requirements

This policy applies when all of the following are true:

- a. The alleged conduct occurred in the educational program and/or activities of Delta College. As defined by this policy, educational programs or activities are locations, events, or circumstances where College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Delta College, including online classes.
- b. Delta College has control over the Respondent at the time of the complaint.
- c. The alleged conduct occurs in the United States.
- d. The complainant is participating or attempting to participate in a Delta College educational program or activity at the time the formal complaint is filed.
- e. The alleged conduct if proved true would meet the definition outlined in 34 CFR part 106.30.

II. Jurisdiction Extended to Off-Campus Misconduct

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College’s educational program. The College may also extend jurisdiction to

off-campus and/or non-academic social networking when the Title IX Coordinator determines that the conduct affects a substantial College interest including:

- a. Any action that constitutes a criminal offense, within the scope of this Policy, as defined by 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 the College.

III. Non-Jurisdiction Support

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 discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

k. PROHIBITED BEHAVIORS

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. This policy prohibits the following definition of sexual harassment including online manifestations of any of the below prohibited behaviors, when those behaviors occur in or have an effect on Delta College's education program and activities or when they involve the use of Delta College networks, technology, or equipment.

I. Sexual Harassment

Sexual harassment is conduct on the basis of sex¹ or that is sexual in nature that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions² the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct.

2) Sexual Harassment:

- 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 the College's education program or activity.³

¹ Including sexual orientation and sex stereotypes.

² Implicitly or explicitly.

³ 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

3) Sexual assault, defined as:

Any sexual act⁴ directed against another person⁵,

- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.⁶
- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Michigan law.
- Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16.

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. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

⁴ A “sexual act” is specifically defined by federal regulations to include one or more of the following:

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.

Criminal Sexual Contact:

- The touching of the body parts of another person (clothed or unclothed)
- Including compelled touching
- for the purpose of sexual gratification, degradation or humiliation,
- 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.

⁵ This would include having another person touch you sexually, forcibly, and/or without their consent.

⁶ This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for “victim,” has removed references to his/her throughout, has defined “private body parts,” has removed the confusing and unnecessary term “unlawfully,” and has inserted language clarifying that the Recipient interprets “against the person’s will” to mean “non-consensually.” These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

- 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 Michigan 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 Michigan.

*To categorize an incident as Domestic Violence under this Policy, 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.

II. Force, Coercion, Consent, and Incapacitation

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,” which elicits the response, “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 perceive and 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 Delta College to determine whether its policy has been violated. The existence of consent is based on 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 and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM⁷ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Delta College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

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, and 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.

I. TIME LIMITS ON REPORTING

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints 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, the College 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.

m. RETALIATION

Delta College and any member of Delta College’s community are prohibited from taking or attempting to take 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.

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information

⁷ Bondage, discipline/dominance, submission/sadism, and masochism.

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. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation.

n. 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.

o. 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 Delta College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Delta College 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. Delta College 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 Delta College's ability to pursue a Formal Grievance Process fairly and effectively. When Delta College 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 Delta College's ability to remedy and respond to notice may be limited if the Complainant does not want the College 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 Delta College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Delta College to honor that request, the College 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. Upon making a formal complaint, a Complainant has the right, and can expect, to

have allegations taken seriously by College, and to have the incidents investigated and properly resolved through these procedures.

p. FEDERAL WARNING AND REPORTING OBLIGATIONS

I. Clery Act

Campus Security Authorities (CSAs), as defined by the Clery Act, have an obligation to report allegations of Clery Act-defined crimes they conclude are made in good faith. These crime allegations should be reported to the Delta College Public Safety Department. In the event of an allegation of sexual misconduct, the Title IX Coordinator will also be informed, unless requested to a Licensed Professional Counselor. The Clery Act definition of Campus Security Authorities includes Delta College personnel beyond Delta College Public Safety Department police officers. An official of Delta College who has significant responsibility for student and campus activities, including but is not limited to, coaches, student organization advisors, and those involved in student discipline or campus judicial proceedings are a Campus Security Authority. The intent of including non-law enforcement personnel as Campus Security Authorities is to acknowledge that many individuals, and students in particular, are hesitant about reporting crimes to the police, but may be more inclined to report incidents to other campus-affiliated individuals. Crimes may be reported to CSAs for inclusion in the annual security report without personal identifiable information. Individuals should report sex discrimination and/or sexual misconduct crimes immediately to the Delta College Public Safety Department or the Title IX Coordinator for the purposes of having the incident assessed for a timely warning notice and for the purpose of annual statistical disclosure.

II. Timely Warnings

Timely Warnings are used for crimes that have already occurred but still pose a potential threat. The timely warning is triggered when the Delta College Public Safety Department identifies a reported crime that poses a potential ongoing or serious threat to students, faculty, staff and/or guests. The College community will be notified in these instances. These incidents must have been reported to Delta College Public Safety Department or the information must have been relayed to Delta College Public Safety Department after having been taken by another local law enforcement agency. Warnings will be provided to students, employees, and the College community in a manner that is timely, that withholds the names of complainants as confidential and that will aid in the prevention of similar occurrences. Reports will be evaluated on a case-by-case basis based on the circumstances and timeliness of the report, proximity to a College campus, and the nature of the Clery-reportable crime. Based on the evaluation of the report, a timely warning may be issued. Those crimes that could initiate a timely warning include, but are not limited to:

- Murder
- Non-Negligent Manslaughter
- Sexual Offenses
- Robbery
- Aggravated Assault
- Arson
- Motor Vehicle Theft
- Hate Bias Crimes

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

q. AMNESTY

The Delta College community encourages the reporting of misconduct by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College 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 the College community that Complainants choose to report misconduct to College 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, College 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.

r. PRESERVATION OF EVIDENCE

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and is particularly time-sensitive. Delta College will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at a hospital, ideally within 120 hours of the incident (sooner is better).
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

s. TITLE IX PROCESS

I. 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 the College needs to take.

1. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator or designee will conduct an initial assessment as soon as possible. The initial assessment will include:

- a. Determining 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 to the College community.
- b. Reaching out to the Complainant to offer supportive measures and ensuring they are aware of their right to have an Advisor.
- c. Working 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.
 - i. 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.
 - ii. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - iii. If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 1. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - a. an incident, and/or
 - b. a pattern of alleged misconduct, and/or
 - c. a culture/climate issue, based on the nature of the complaint.
 2. 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 and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit the College’s authority to address a complaint with an appropriate process and remedies.

2. Response

The initial assessment will conclude with the Title IX Coordinator initiating at least one of the following responses:

- a. Offering supportive measures because the Complainant does not want to file a formal complaint ; and/or
- b. An informal resolution (upon submission of a formal complaint); and/or
- c. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).
- d. Refer to another policy/procedure

The College uses the Formal Grievance Process to determine whether or not this Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment, their potential recurrence, or their effects.

II. Dismissal

The College 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 sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College 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 the College.

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

Upon any dismissal, the College 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.

III. Counterclaims

Counterclaims made with retaliatory intent will not be permitted. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

IV. Advisors

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution 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.

Parties may not choose an advisor who is also a witness in the process as doing so creates potential for bias and conflict-of-interest. If at any time the College becomes aware that an advisor is also a witness, all parties can anticipate that an issue of potential bias will be explored by the hearing Decision-Maker(s).

Unless permitted by law, each party may only have one (1) advisor present at meetings, interviews and/or hearings. No other persons will be permitted to participate in any portion of the resolution process.

1. 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 the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College's policies and procedures.

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

2. Advisors in Hearings/College-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the College 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 hearing.

3. Advisor's Role

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.

The College 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, the College is not obligated to provide an attorney.

4. Pre-Interview Meetings

Advisors may request to meet with the Title IX Coordinator in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the College's policies and procedures.

5. Advisor Violations of College Policy

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless

invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee⁸ 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 hearing proceeding, during cross-examination. In addition, no persons, including any party or an advisor, may audio or video record any meeting, interview or hearing proceeding.

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.

6. Sharing Information with the Advisor

The College expects that the parties may wish to have the College 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.

The College also provides a [release form](#) that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the College is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the College will not comply with that request.

7. 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 the College. The College 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 the College's privacy expectations.

8. Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend College 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.

The College 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.

⁸ Subject to the state law provisions or College policy above.

9. 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 Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with the investigator (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 release 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.

For parties who are entitled to union representation, the College will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

In complaints against employees, the director of human resources will be present at all meetings, interviews, and hearings. The director of human resources may ask additional questions. The director of human resources is present to prevent duplicative processes for employment decisions and is not considered an advisor in this process.

10. Assistance in Securing an Advisor

a. A list of current, trained on campus Advisors can be found on the public website on the [Title IX page](#) under the Title IX/VAWA Advisors dropdown.

b. Off Campus Advisors/Resources

Please note that the following services are not affiliated with the College and may not be local. Please consider your choice of an advisor so that it does not create any unnecessary delays in due process.

Click the link(s) below for a listing of local legal support services that may offer discounted or pro bono services. The College does not endorse any of the off-campus legal support services. Use the following services at your own risk.

- Michigan Legal Help (<https://michiganlegalhelp.org/>)
- State Bar of Michigan (Legal Aid) (https://www.michbar.org/public_resources/legalaid)

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 Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal->

V. 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 Delta College 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 as part of an Informal Resolution, discussed below. Delta College encourages parties to discuss with their Advisors any sharing of information before doing so.

The Formal Grievance Process is Delta College's primary resolution approach, unless Informal Resolution is elected by all parties and Delta College. Three options for Informal Resolution are detailed in this section, and the Formal Grievance Process is detailed starting in the next section. The Informal Resolution process is not offered when resolving complaints alleging that an employee sexually harassed a student.

1. Informal Resolution

- **Supportive Resolution:** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- **Alternative Resolution:** When the parties agree to resolve the matter through an alternative resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.
- **Accepted Responsibility:** When the Respondent accepts responsibility for violating policy, and desires to accept a sanction(s) and end the resolution process; see discussion in c., below.

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree as a condition of engaging in Informal Resolution that statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

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

Prior to implementing Informal Resolution, Delta College 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 Delta College. Delta College 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.

2. Alternative Resolution Approaches

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

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

- The parties' amenability to Alternative 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 Alternative 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 Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to negotiate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors.

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 Alternative Resolution are not appealable.

3. 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 Delta College 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 Delta College 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 consent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance 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 harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

VI. Formal Grievance Process Participants

In addition to the Title IX Coordinator who will be the Investigator, the Formal Grievance Process is carried out by the Decision-Maker, Appellate, Advisors and in some instances, the Director of Human Resources (or designee).

1. Investigator

The Title IX Coordinator, or designee if the Title IX Coordinator has a conflict of interest, will be the Investigator and begin to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

2. Decision-Maker

The Decision-Maker role held by the individuals employed by Delta College in the following positions and appointed to a complaint based on the respondent's affiliation:

- a. Vice President of Student & Educational Services for complaints alleging student/visitor misconduct
- b. Vice President of Instruction/Learning Services for complaints alleging faculty (including tutors and SLAs) misconduct
- c. Vice President of Business & Finance for complaints alleging all other staff misconduct

3. Appellate

The Appellate role is held by the individuals employed by Delta College in the following positions and appointed to a complaint based on the respondent's affiliation:

- a. Dean of Student Success or Dean of Enrollment Management for complaints alleging student/visitor misconduct
- b. Dean of Teaching & Learning or the Academic Dean of Career Education and Learning Partnerships for complaints alleging faculty (including tutors and SLAs) misconduct
- c. Executive Director of Administrative Services & Institutional Effectiveness or Executive Director of Institutional Advancement for complaints alleging all other staff misconduct

4. Advisors

College-appointed advisors are other employees of Delta College who have been trained on this policy and are willing to assist parties through the Formal Grievance Process. A list of current Advisors and their contact information can be found online at...

5. Director of Human Resources

When a complaint is filed against an employee, the Director of Human Resources, or designee, will participate in the College investigation and processes. Human Resources involvement is to ensure all internal policies and procedures are followed and to have first hand knowledge should sanctions result if violations are found by the Decision-Maker.

The Grievance Process participants are required to receive annual training on the following topics, as appropriate to their role. The materials used to train all members of the Pool are publicly posted here: <https://www.delta.edu/equity/title-ix/index.html>.

- The scope of Delta College's Title IX Policy and Sexual Misconduct and Gender Discrimination 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 Delta College 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, discrimination, and/or retaliation allegations
- Recordkeeping

VII. Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (NOIA) to the Respondent upon commencement of the Formal Grievance 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 Delta College 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 Delta College'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 Delta College'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,
- Information about relevant on and off campus resources,
- The name of the Investigator, along with a process to identify, in advance of the interview process, 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 will be emailed to the parties' Delta College-issued email. If the letter remains unopened by a party an attempt will be made to deliver the notice in person. If that attempt is unsuccessful or not possible, the notice will be mailed to the home address of the party on file with Delta College. Once emailed, received in-person or mailed, notice will be presumptively delivered.

VIII. Recording of Interviews/Hearings

No audio or video recording of any kind is permitted during investigation meetings or hearings by any party. The Investigator or designee will audio and/or video record all interviews and hearings for transcription purposes. All involved parties will be made aware of the audio and/or video recording.

IX. Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence.

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.

An Investigation will typically consist of the following steps:

- Determine the identity and contact information of the Complainant
- In coordination with campus partners 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
- Conduct 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 witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator 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.
- The Investigator will gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report. Prior to the conclusion of the investigation, provides 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 Delta College 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).
- The Investigator 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 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 should document all rationales for any changes made after the review and comment period
- The Investigator shares the report with legal counsel for their review and feedback, as needed
- 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.

X. Role and Participation of Witnesses

Witnesses (as distinguished from the parties) who are employees of Delta College are expected to cooperate with and participate in the College'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, pandemic) 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. Delta College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

XI. Investigation Evidentiary Considerations

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) 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.

XII. Title IX Hearing

1. Scheduling

Once the final investigation report is shared with the parties, the Title IX Coordinator will schedule the matter for a hearing.

- a. 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.
- b. The Decision-Maker is determined by the Respondent’s affiliation with the college as outlined above in V – Formal Grievance Process Participants. The Decision-Maker will not have had any previous involvement with the investigation.
- c. No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- d. 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 that could result.
 - The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
 - Technology that will be used to facilitate the live hearing with the parties located in separate rooms that enables the Decision-Maker and parties to see and hear a party or witness answering questions.
 - A list of all those who will attend the hearing, along with an invitation to object to the Decision-Maker on the basis of demonstrated bias. This must be requested 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. For compelling reasons, the Decision-Maker may reschedule the hearing.
 - Notification that the parties will be required to have an Advisor 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 the College 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.
 - An invitation to each party to submit to the Decision-Maker 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.
 - A statement restricting parties from recording the hearing.
 - A statement requiring the parties to bring their own copies of any evidence,

reports, etc. that may be referenced during the hearing

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 the College and remain within the 90 business day goal for resolution.

2. Preparation

- Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator unless all parties and the Decision-Maker consent 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 Decision-Maker do not consent to the admission of evidence newly offered at the hearing, the Decision-Maker 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) at least five (5) business days in advance of the 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 at least 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.
- The Decision-Maker will request the parties and/or their Advisors to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Decision-Maker 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 Decision-Maker must document and share with each party their rationale for any exclusion or inclusion.

3. Proceedings

a. Evidentiary Considerations

Any evidence that the Decision-Maker determines 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) 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 Delta College uses a progressive discipline system. 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.

b. Participants at the Hearing

Participants at the hearing will include the Decision-Maker, the Investigator who conducted the investigation, the parties (or three (3) organizational representatives when an organization/group is the Respondent), Advisors to the parties, the Director of Human Resources if the respondent is an employee, any called witnesses and anyone providing authorized accommodations or assistive services.

At the hearing, the Decision-Maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in connection with the sexual harassment and/or retaliation, even though they may not specifically fall within this policy. The Decision-Maker or Title IX Coordinator will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

c. 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.

d. Introductions and Explanation of Procedure

The Decision-Maker explains the procedures and introduces the participants. The Decision-Maker then conducts the hearing according to the hearing script. 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 Equity Office staff. The Equity Office staff 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, as appropriate, etc.

e. Presentation of Investigation Report

The Investigator will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Maker and the parties (through their Advisors). The Investigator will be present during the entire hearing process, but not during deliberations. Neither the parties nor the Decision-Maker should ask the Investigator their opinion on credibility, recommended findings, or determinations, and the

Investigator, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-Maker will direct that it be disregarded.

f. Testimony and Questioning

Once the Investigator presents 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 Decision-Maker. The parties/witnesses will submit to questioning by the Decision-Maker and then by the parties through their Advisors (“cross-examination”).

g. Relevance Considerations

All questions are subject to a relevance determination by the Decision-Maker. 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 upon request if agreed to by all parties and the Decision-Maker), the proceeding will pause to allow the Decision-Maker to consider it (and state it if it has not been stated aloud), and the Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-Maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-Maker has final say on all questions and determinations of relevance. The Decision-Maker may consult with legal counsel on any questions of admissibility. The Decision-Maker 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 has ruled on a question.

h. Deliberation and Standard of Proof

The Decision-Maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used (the evidence demonstrates that it is more likely than not that the conduct occurred). This standard is often referred to as a “50% plus a feather.”

When there is a finding of responsibility on one or more of the allegations, the Decision-Maker may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Decision-Maker will review the statements and any pertinent conduct history provided by the Title IX Coordinator or Administrator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

i. Decision

The Decision-Maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator within five (5) business days, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

j. Notice of Outcome

Using the deliberation statement, the Equity Office staff will work with the Decision-Maker to prepare a Notice of Outcome. The Equity Office will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of

receiving the Decision-Maker's deliberation statement.

The Notice of Outcome will 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 Delta College records, or emailed to the parties' Delta College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the following:

- Specific policy(ies) reported to have been violated, including the relevant policy section
- A description of the procedural steps taken by the College 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 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 Delta College is permitted to share such information under state or federal law; any sanctions issued which Delta College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Delta College's educational or employment program or activity, to the extent Delta College 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 the College to be final and the relevant procedures and bases for any available appeal options.

XIII. Sanctions

1. Sanction Considerations

Factors considered when determining a sanction 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 to bring an end to the sexual harassment and/or retaliation
- The need for sanctions 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

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.

2. Possible Sanctions

a. Students

Delta College may impose any sanction, penalty, remedial action, educational activity or community-service requirement that it deems appropriate. Those consequences may include, but are not limited to:

- verbal or written warnings
- probation or expulsion
- permanent revocation of recognition
- suspension of eligibility to represent the College in athletic competitions or other events or programs
- removal of officers and members
- fines
- loss of specified privileges
- restitution and/or other compensatory requirements
- letter(s) of apology
- no trespassing letter
- assignment of organizational or campus-wide education initiatives

Any sanction may be with or without other restrictions, or may be in any combination thereof. **Failure to comply with the terms of the sanction(s) may result in additional disciplinary action.** Copies of the notice for any penalty or sanction may be sent to appropriate College offices. In the case of expulsion, the Equity Office will request OIT to terminate the student’s electronic access.

b. Employees

Discipline will ordinarily follow the progressive steps described below, except that the College reserves the right to add to, repeat, skip or omit steps as it deems appropriate. In the case of termination, the President has sole authority to terminate an employee.

Employee Class	Verbal Warning	Written Discipline/ Warning	Final Warning & Suspension	Termination/ Discharge
Administrative Professional Staff	X	X	X	X
Facilities Management	X	X	X	X
Faculty (Full Time)	X	X	X	X
Part Time Employees Including Adjunct Faculty	X	X	X	X
Support Staff	X	X	X	X
Temporary Employees	X	X	X	X

Please note, 3.021 of the Senate Handbook (Progressive Discipline for Faculty for Reasons Other Than Teaching Effectiveness) is not part of this process.

c. Visitors

Disciplinary actions may include suspension or expulsion from College buildings and/or properties and/or events as the College deems appropriate.

3. Failure to Comply

All Respondents are expected to comply with the assigned sanctions within the timeframe specified by the final Decision-Maker and/or Appellate. Sanction compliance will be determined by the Title IX Coordinator. Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s), including suspension, expulsion, and/or termination from the College. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

XIV. Withdrawal or Resignation while Charges Pending

1. Students

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Delta College, the resolution process ends, as Delta College no longer has disciplinary jurisdiction over the withdrawn student.

However, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. A hold will be placed on the account of the student who withdraws or leaves while the process is pending and may not return to Delta College until the resolution process is complete. They may also be barred from College 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 Delta College unless and until all sanctions have been satisfied.

2. Employees

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee.

However, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Delta College without completing the resolution process, and the records retained by the Title IX Coordinator will reflect that status.

XV. Appeals

1. Appeal Process

All parties will have five (5) business days from receipt of the Notice of Outcome letter to file a request for an appeal of the Decision-Maker's determination by completing the online appeals form in its entirety (identifying the approved reason and providing an explanation) and providing supporting documentation, if required. If this time period lapses, then the Decision-Maker's determination becomes final.

- Students and visitors will file an appeal with the Dean of Students (or Dean of Enrollment)*
- Faculty will file an appeal with the Dean of Teaching and Learning or Academic Dean of Career Education and Learning Partnerships*
- Staff will file an appeal with the Executive Director of Administrative Services & Institutional Effectiveness (or Executive Director of Institutional Advancement)*

*Contact information for the position above will be included in the Notice of Outcome letter sent to the complainant and the respondent. In the event that a conflict of interest is identified between one of the parties and the appropriate appellate listed above, the Title IX Coordinator will designate an alternate appellate.

2. Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural irregularity (failure to follow institution's procedures) that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

The appellate will review the appeal to determine if the request meets the grounds for appeal. This review is not a review of merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed. The original finding(s) and sanction(s) will stand if the appeal request is not timely and/or substantively validated.

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 Appellate and the parties and their Advisors will be notified in writing of the denial and the rationale. Any sanctions will be immediately imposed.

If any of the grounds in the request for appeal meet the grounds in this Policy, the Appellate will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator and/or the original Decision-Maker in writing of the request for appeal with the approved grounds. All parties will then have five (5) business days to submit a response to the portion of the appeal that was approved and involves them to provide their support or challenge of the determination and/or dismissal. Once the five (5) business days lapses, the Appellate will forward any responses received 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 the Policy of the Appellate and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator and/or original Decision-Maker, as necessary, who will submit their responses in five (5) business days. Once the five business days lapses, the Appellate will forward any responses received to all parties for review and comment.

Neither party may submit any new requests for appeal after this time period. The Appellate will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and render a decision in no more than 12

business days, barring exigent circumstances. If it is deemed by the Appellate that more time is needed to fully investigate the new evidence, a written notice of an extension will be sent to all parties. The Appellate's decision is binding and final.

A Notice of Appeal Outcome will be sent in writing to all parties simultaneously (via email) 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 the institution is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the institution is permitted to share under state or federal law.

3. Sanctions During the Appeal

Any sanctions imposed as a result of the Decision-Maker's determination will not be imposed until the appeal process is complete. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If the original sanctions include separation in any form, the institution may place a hold on official transcripts, diplomas, graduations, and course registrations pending the outcome of the appeal. The respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the Notice of Outcome. The request will be evaluated by the Title IX Coordinator or designee, who determination is final.

4. Appeal Considerations

The timeline for the appeals process is not included in the investigation timeline.

- The recording of the live hearing will be available, upon request, to all parties during the appeal process.
- Appeals are not intended for a full re-hearing 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 Appellate to substitute their judgment for that of the original Decision-Maker merely because they disagree with the finding and/or sanction(s).
- The Appellate 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 and Decision-Maker 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 error cannot be cured by the original Decision-Maker (as in cases of bias), the appeal may order a new hearing with a new Decision-Maker.
- 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 the institution 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.

XVI. Long-Term Remedies

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

These remedies may include, but are not limited to:

- Referral to counseling and Employee Assistance Program (EAP)
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Policy modification and/or training
- 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 remedies 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 the College to the Respondent to ensure no effective denial of educational access. Delta College will also maintain the privacy of any long-term remedies, provided privacy does not impair the College's ability to provide these services.

4. RECORDKEEPING

Delta College 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 the College's education program or activity;
4. Any appeal and the result therefrom;
5. All materials used to train Title IX Coordinators, Investigators, Decision-Makers and Advisors. Delta College will make these training materials publicly available on the College's website; and
6. Any actions, including any supportive measures, 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 Delta College's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Delta College will also maintain any and all records in accordance with state and federal laws.

5. REVISION OF THIS POLICY

This Policy will be reviewed and updated annually by the Title IX Coordinator. Delta College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution 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.

Revised: August 25, 2021 - *Per the decision issued in the case of Victim Rights Law Center et al. v. Cardona, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021), sub-section h. Refusal to Submit to Cross Examination was removed from section XII. Title IX Hearing.*