



# **Title IX Sexual Harassment Policy**

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## **I. POLICY STATEMENT**

Consistent with Alverno College's Non-Discrimination Statement and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (see 34 C.F.R. § 106 *et seq.*), Alverno College prohibits Sexual Harassment that occurs within its Education Programs or Activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty members, staff, students, contractors, guests, and other members of the College community who commit Sexual Harassment are subject to the full range of College discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (i.e., termination or dismissal); physical restriction from College property; cancellation of contracts; and any combination of the same.

Alverno College will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to Alverno College's Education Programs or Activities.

## **II. SCOPE**

This policy applies to Sexual Harassment that occurs within Alverno College's Education Programs or Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the College community.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of Alverno College's Education Programs or Activities; such sexual misconduct may be prohibited by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or Alverno and You and any other College or department specific policies and standards if committed by an employee. Harassment committed by a Faculty or Staff member may also fall under Title VII of the Civil Rights Act.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in Alverno College's Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or Alverno and You and any other College or department specific policies and standards if committed by an employee. Harassment committed by a Faculty or Staff member may also fall under Title VII of the Civil Rights Act.

### III. DEFINITIONS

- A. "Sexual Harassment" is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.
- B. "Quid Pro Quo Sexual Harassment" is an employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.
- C. "Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to Alverno College's Education Programs or Activities.
- D. "Sexual Assault" includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>
  - 1. "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
  - 2. "Sodomy" is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - 3. "Sexual Assault with an Object" is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
  - 4. "Fondling" is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving

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<sup>1</sup> Alverno College's definition of "Sexual Assault" is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the College to adopt a definition of "Sexual Assault" that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

5. "Incest" is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Wisconsin law.
  6. "Statutory Rape" is sexual intercourse with a person who is under the statutory age of consent as defined by Wisconsin law.
- E.** "Domestic Violence" is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Wisconsin, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Wisconsin.
- F.** "Dating Violence" is violence committed by a person –
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.
- G.** "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
  - Suffer substantial emotional distress.
- H.** "Consent" refers to words or actions that a reasonable person would understand as agreement to engage in the sexual conduct at issue. Consent includes positive cooperation involving an act of free will AND the absence of incapacitation, coercion, intimidation, force, or the threat of force. Each person engaged in the sexual activity must provide active consent for mutual consent to be present. If limits are made clear and consent is not given, pressuring an individual into changing his or her mind

is not consent and may constitute Coercion. A person who is Incapacitated is not capable of giving Consent.

It is critical to remember that:

- Consent is based on choice.
  - Consent is active, not passive. Silence and passivity do not equal consent.
  - Consent is more difficult to establish when there is unequal power.
  - Consent to one type of sexual contact does not imply consent to another.
  - Consent may be withdrawn at any time.
  - Consent requires conditions free of Coercion; relenting because of fear is not consent.
  - Consent means two people (or more) deciding together to do the same thing, at the same time, in the same way, with each other.
  - Absence of a “no” does not mean “yes.”
- I.** “Coercion” is direct or implied threat of Force, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person’s words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other’s freedom of will and ability to choose whether to engage in sexual activity.
- J.** “Force” means the use of physical violence and/or physically imposing on someone to gain sexual access. There is no requirement that an individual resist a sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of Force is not demonstrated by the absence of resistance. Sexual activity that is Forced is non-consensual, but non-consensual sexual activity is not by definition Forced.
- K.** “Incapacitated” refers to the state in which someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (i.e., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or the effects of drugs or alcohol consumption. Possession, use, and/or distribution of “date rape” drugs (e.g., Rohypnol, Ketamine, GHB, Burundaga) is prohibited and administering one of these drugs to another

student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.

- L.** “Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an 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.
- M.** “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- N.** “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- O.** “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in Alverno College’s Education Programs or Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.
- P.** “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to Alverno College’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or Alverno College’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.
- Q.** “Education Programs or Activities” refers to all the operations of the College, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the College. It also



includes off-campus locations, events, or circumstances over which the College exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the College.

#### **IV. EVALUATING HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

In determining whether a hostile environment exists, the College will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the context in which the conduct occurred; and the number of persons affected. The College will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. This evaluation will include how the alleged environment has affected the Complainant's ability to participate in educational activities or programs offered through Alverno College. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The College encourages members of the College Community to report all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts

- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

## **V. REPORTING SEXUAL HARASSMENT**

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The name and contact information for the Title IX Coordinator is:

Jason J. Pilarski  
Director for Campus Safety / Chief  
Founders Hall, Room 254  
3400 S 43<sup>rd</sup> Street  
Milwaukee, WI 53234  
(414) 382 - 6151  
[jason.pilarski@alverno.edu](mailto:jason.pilarski@alverno.edu)

Reports may also be made to the following Deputy Title IX Coordinators:

Deputy Title IX Coordinator for Students  
Rachel Haos, Assistant Director for Student Affairs  
Founders Hall, Room 119  
(414) 382 - 6006  
[rachel.haos@alverno.edu](mailto:rachel.haos@alverno.edu)

Deputy Title IX Coordinator for Employees  
Magda Hoffman, Director of Human Resources  
Founders Hall, Room 211  
(414) 382 - 6420  
[magda.hoffman@alverno.edu](mailto:magda.hoffman@alverno.edu)

Title IX Advisor for Athletics  
Katari Key, Athletic Director  
Athletic and Fitness Building, Room 216  
(414) 385 - 6324  
[katari.key@alverno.edu](mailto:katari.key@alverno.edu)

## **VI. EMPLOYEE REPORTING OBLIGATIONS**

All College employees have a duty to report Sexual Harassment to the Title IX Coordinator or a Deputy Title IX Coordinator when they receive a report of such conduct, witness such conduct, or otherwise obtain information about such conduct. Employees may not promise confidentiality to anyone who discloses potential Sexual Harassment to them.

This mandatory reporting obligation includes student employees who receive information about Sexual Harassment in their employment capacity. Student employees who are Residence Life Community Assistants or who work in Student Affairs or Campus Safety offices must adhere to this mandatory reporting obligation at all times due to their visible presence on campus as “go-to” individuals when assistance is needed.

This reporting obligation does not extend to those employees bound by confidentiality (e.g., professional counselors and clergy). However, the reporting obligation does include employees who may have a professional license requiring confidentiality if they are not employed by the College in that professional role.

Any employee who fails to report Sexual Harassment as required by this policy may be disciplined accordingly, up to and including termination.

## **VII. SPECIAL ADVICE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING**

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the College recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement
- Preserve all forms of electronic communication that occurred before, during, or after the assault

- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, College chaplain, or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Title IX grievance process.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

Alverno College's Department of Campus Safety can assist individuals in obtaining a personal protection order ("PPO"). PPOs consist of Restraining Orders, No Contact Orders, and No Trespass Orders.

Restraining Orders and/or Injunctions are a court order prohibiting an individual from making contact with another person.

No Contact Orders can be part of a Restraining Order or Injunction. However, they can also be an instruction by the College to an individual to cease contact with another person.

No Trespass Orders can only be issued by and removed by the College Department of Campus Safety in compliance with WI state statute.

If done as a part of a Title IX case these orders must comply with this policy. (See section on Supportive Measures).

## **VIII. PRELIMINARY ASSESSMENT**

After receiving a report of potential Sexual Harassment, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of this policy (see “Scope”); and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other College offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”).

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

## **IX. CONTACTING THE COMPLAINANT**

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”) and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see “Supportive Measures”); to discuss and consider the Complainant’s wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

## **X. SUPPORTIVE MEASURES**

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”), the College will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the College will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The College will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

The College will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair Alverno College's ability to provide the Supportive Measures in question.

## **XI. INTERIM REMOVAL**

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of Alverno College's Education Programs or Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the College may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see "Investigation" and "Adjudication").

For all other Respondents, including independent contractors and guests, the College retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

## **XII. FORMAL COMPLAINT**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the College investigate and adjudicate a report of Sexual Harassment in accordance with this policy and procedures. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of Alverno College's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in "Reporting Sexual Harassment." No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the College if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances

involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the College community.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the College will commence an investigation as specified in "Reporting Sexual Harassment" and proceed to adjudicate the matter as specified in "Adjudication," below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

### **XIII. CONSOLIDATION OF FORMAL COMPLAINTS**

The College may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

### **XIV. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in "Scope" (that is, because the alleged conduct did not occur in Alverno College's Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint must be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The dismissal is a final determination unless modified or overturned on appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate.

## **XV. NOTICE OF FORMAL COMPLAINT**

Within five (5) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”
- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence.”
- Notifying the Complainant and Respondent of Alverno College’s prohibitions on retaliation and false statements specified in Sections “Bad Faith Complaints and False Information” and “Retaliation.”
- Information about resources that are available on campus and in the community.

Should the College elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the College will provide a supplemental written notice describing the additional allegations to be investigated.

## **XVI. INVESTIGATION**

### **A. Commencement and Timing**

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the College and not with the parties. The investigation will culminate in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the College strives to complete each investigation within thirty (30) to forty-five (45) days of the transmittal of the written notice of Formal Complaint.



## **B. Equal Opportunity**

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in "Sexual History." The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

## **C. Documentation of Investigation**

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, recorded via a college owned and controlled recording device. All interviews and statements will be transcribed and provided as a part of the official record of the investigation. This transcription will be included to the parties as part of the evidence. This method shall be used consistently throughout all investigations.

## **D. Access to the Evidence**

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the College may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

## **E. Investigation Report**

After the period for the parties to provide any written response has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists

material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

## **XVII. ADJUDICATION**

### **A. Pre-Adjudication Conference**

Once the parties have received the investigation report, the Title IX Coordinator will meet separately with each party and the party's advisor to conduct a pre-adjudication conference. During the pre-adjudication conference, the Title IX Coordinator will address the following items with each party:

- Reminder about the role of the Title IX Coordinator, hearing officer, advisor, and support persons.
- Reminder about available resources.
- Reminder about the party's rights during the adjudication process.
- Completion of appropriate FERPA releases.
- Review of allegations and potential sanctions.
- The names of potential hearing officers and an opportunity to identify any conflicts of interest.
- Whether the student wishes to use an advisor provided by the College at the hearing.

In the Title IX Coordinator's discretion, the pre-adjudication conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

### **B. Hearing officer**

Following the pre-adjudication conference, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in "Access to Evidence."

### **C. Hearing Notice and Response to the Investigation Report**

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying them of the hearing officer's

appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date and time for the hearing; providing a copy of Alverno College's Hearing Procedures; and providing a letter excusing the party from work or class on the date of the hearing. The hearing shall not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this Section ("Hearing Notice and Response to the Investigation Report").

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in "Sexual History," or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to Alverno College's Hearing Procedures;
- Any request that the parties be separated physically during the hearing;
- Any other accommodations that the party seeks with respect to the hearing;
- The name and contact information of the advisor who will accompany the party at the hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the College provide an advisor for purposes of conducting questioning as specified in "Hearing."

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

#### **D. Impact Statements and Letters of Support**

The hearing officer will also notify both parties of their right to submit an impact statement and up to three (3) letters of support in advance of the hearing.

An impact statement should address how the alleged incident has impacted the party, including the party's educational pursuits and/or employment. This statement is not intended to discuss the merits of the case but can discuss how it has affected the party emotionally, physically, mentally, and spiritually.

Letters of support must come from individuals who have known the party for at least two (2) years as a friend, co-worker, family member, clergy, spiritual advisor, coach, or mentor. The letters of support are intended to shed light on the party's character and/or the impact of the alleged incident on the party and should not address the merits of the case. The letters should be typed, signed, and submitted directly to the hearing officer. Each letter cannot exceed one (1) page single-spaced 500-word count or one (1) page double-spaced 250-word count.

Impact statements and letters of support must be submitted to the hearing officer at least three (3) business days before the hearing date.

#### **E. Issuance of Notices of Attendance**

The hearing officer will transmit notices of attendance to any College employee (including administrators, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The College will not issue a notice of attendance to any witness who is not an employee or a student.

#### **F. Hearing**

The hearing officer will convene and conduct a hearing pursuant to Alverno College's Hearing Procedures. The hearing will be recorded as required by the federal regulations. The recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. The hearing may be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary College personnel together in the same physical location. Upon necessity, request of either party, or by decision of the hearing officer, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

Whenever the hearing is conducted virtually, by use of video and audio technology, all participants participate simultaneously and contemporaneously by use of such technology. Such use shall be provided equal in location and access.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors and support persons, the investigator, the hearing officer, the Title IX Coordinator, and other necessary College personnel. Witnesses will be sequestered from one another until such time as their testimony is complete.

Each party is permitted to have up to three support persons present during the hearing to provide emotional and moral support. Support persons may not actively participate in the hearing and must remain silent. They may not otherwise be a party or witness to the proceedings.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

While a party has the right to attend and participate in the hearing with an advisor and support person, any party, advisor, or support person who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section ("Hearing"), the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously

screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section (“Hearing”) are met.

#### **G. Subjection to Questioning**

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties’ advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered, or in the case where neither party requested attendance of the witness at the hearing.

In applying this Section (“Subjection to Questioning”), the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness’s absence from the live hearing and/or refusal to submit to questioning by the parties’ advisors.

#### **H. Deliberation and Determination**

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a complainant, respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible during the hearing or by operation of “Subjection to Questioning.” The hearing officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

#### **I. Discipline and Remedies**

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate College official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

- The Respondent(s) could be found not responsible for the alleged violation. Please note, a finding of no responsibility does not mean the incident did not happen, rather there was not enough evidence as presented at the hearing to meet the preponderance of evidence standard.
- If it has been determined that a Title IX policy violation has occurred, Alverno College's response will depend on the nature and severity of the incident. The range of responses includes, but is not limited to:
  - Individual meeting with the Respondent(s) and the Respondent(s)'s advocate
  - Required educational activity
  - No Contact Order between the Complainant and the Respondent(s)
  - Protective measures may be applied (e.g., No Trespass Order for certain parts of campus, residence hall move, etc.)
  - Disciplinary action may include any of the following:
    - Written warning,
    - Probation
    - Removal from Campus Housing
    - Suspension
    - Termination of Employment and/or Dismissal from Alverno College

## **J. Written Decision**

After reaching a determination and consulting with the appropriate College official and Title IX Coordinator as required by "Discipline and Remedies," the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate College official as referenced in "Discipline and Remedies;"

- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of Alverno College’s process and grounds for appeal, as specified in “Appeal.”

The hearing officer’s written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in “Appeal.”

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the College strives to issue the hearing officer’s written determination within fourteen (14) days of the conclusion of the hearing.

### **XVIII. DISMISSAL DURING INVESTIGATION OR ADJUDICATION**

The College is required to dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in ”Scope” (that is, because the alleged conduct did not occur in Alverno College’s Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

The College may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled<sup>2</sup> or employed by the College, as the case may be; or

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<sup>2</sup> The College will typically continue the investigation and adjudication process even when a student respondent has taken a leave of absence or disenrolled. In such situations, the Respondent will retain their rights to fully participate in the proceedings. In situations where a student takes a leave of absence or disenrolls and refuses to cooperate, the College will place a “hold” on the student’s transcript which precludes re-enrollment without authorization from the Assistant Dean of Students and transmittal of an official transcript to another institution of higher education.



- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX Coordinator may refer the subject matter of the Formal Complaint to other College offices, as appropriate. The dismissal is a final determination unless modified or overturned on appeal.

## **XIX. APPEAL**

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome; and
- The sanction(s) imposed are substantially disproportionate to the severity of the violation.

No other grounds for appeal are permitted.

A party must file an appeal within ten (10) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other party appealing, whichever is later. The appeal must be submitted in writing to the relevant appeal officer as follows:

- Student respondents: Dean of Student Success and Development
- Employee respondents: Director of Human Resources

The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that

it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the College strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

## **XX. ADVISOR OF CHOICE**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

The College maintains a list of trained advisors from among its faculty and staff who are available to assist complainants and respondents. College provided advisors are not attorneys and have no legal training or knowledge; they do not represent or advocate on behalf of a party.

Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the College about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section and/or "Hearing," the College may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in “Hearing,” the College will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The College will have sole discretion to select the advisor it provides. The advisor the College provides may be, but is not required to be, an attorney.

The College is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing, and one is provided to conduct questioning on behalf of the party.

In the event that an Advisor is precluded from continued participation under this Section and/or “Hearing”, the investigation, adjudication, or appeal will be stayed and all related deadlines are suspended for not more than ten (10) days to allow for the party to arrange a new advisor. The investigation, adjudication, or appeal will continue from the point where it had been stayed.

## **XXI. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION**

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;
- unless the College has obtained the party’s voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

## **XXII. SEXUAL HISTORY**

During the investigation and adjudication processes, questioning regarding a Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information

otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

### **XXIII. INFORMAL RESOLUTION**

At any time after the parties are provided written notice of the Formal Complaint as specified in "Notice of Formal Complaint," and before the issuance of a written decision, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another College official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the College, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation,

or other misconduct or where required to avoid a manifest injustice to either party or to the College. Informal resolution pursuant to this Section is not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

#### **XXIV. PRESUMPTION OF NON-RESPONSIBILITY**

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

#### **XXV. AMNESTY**

The College recognizes that students who have consumed alcohol when they are not 21 years of age or who have been using illegal drugs may be hesitant to report Sexual Harassment perpetrated against them or others. Therefore, the College will not take disciplinary action under its alcohol or drug policies against a student who discloses illegal alcohol or illegal drug use in the context of reporting Sexual Harassment directed against them or another person. However, the College reserves the right to require counseling, education, or other preventative measures to help prevent alcohol or drug violations in the future. Alverno College's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

#### **XXVI. RESOURCES**

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the College. The College encourages any individual who has questions or concerns to seek support of College identified resources. The Title IX Coordinator is available to provide information about Alverno College's policy and procedure and to provide assistance. A list of College identified resources is located at the following link: <https://www.alverno.edu/files/galleries/Resources-0003.pdf>.

## **XXVII. CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS**

The Title IX Coordinator, investigator, hearing officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these College officials has a material conflict of interest or material bias must raise the concern promptly so that the College may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in "Appeal," or otherwise.

## **XXVIII. OBJECTIONS GENERALLY**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the College may evaluate the matter and address it, if appropriate.

## **XXIX. FREEDOM OF EXPRESSION AND ACADEMIC FREEDOM**

The College will construe and apply this policy consistent with the principles of academic freedom and freedom of expression specified in College policies. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the principles of academic freedom or free expression, as specified in College policies.

## **XXX. RELATIONSHIP WITH CRIMINAL PROCESS**

This policy sets forth Alverno College's processes for responding to reports and Formal Complaints of Sexual Harassment. Alverno College's processes are separate, distinct, and independent of any criminal processes. While the College may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the College will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

## **XXXI. RECORDINGS**

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the College and is considered property of the College, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the College is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

## **XXXII. VENDORS, CONTRACTORS AND THIRD PARTIES**

The College does business with various vendors, contractors, and other third parties who are not students or employees of the College. Notwithstanding any rights that a given

vendor, contractor, or third-party Respondent may have under this policy, the College retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the College retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

### **XXXIII. BAD FAITH COMPLAINTS AND FALSE INFORMATION**

It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Code of Student Conduct in the case of students and other College policies and standards, as applicable, for other persons.

### **XXXIV. RETALIATION**

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in "Reporting Sexual Harassment," and "Formal Complaint." Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. The College retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

### **XXXV. CONFIDENTIALITY**

The College will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The College will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records.

Notwithstanding the foregoing, the College may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out Alverno College's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding Alverno College's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.

While the College will maintain confidentiality specified in this Section, the College will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties

are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the College must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

#### **XXXVI. OTHER VIOLATIONS OF THIS POLICY**

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students, the Faculty Handbook for faculty, or Alverno and You, department specific or other College policies and standards for employees.

#### **XXXVII. SIGNATURES AND FORM OF CONSENT**

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

#### **XXXVIII. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL**

Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by the College where, in Alverno College's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with Alverno College's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, appeal officer, or Title IX



Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. The College officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the College.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using College email addresses.

A party is deemed to have received notice upon transmittal of an email to their College email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the College, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant College officials; approaching holidays or closures; and the number and length of extensions already granted.

#### **XXXIX. OTHER FORMS OF DISCRIMINATION**

This policy applies only to Sexual Harassment. Complaints of other forms of sex discrimination are governed by Alverno College’s Non-Discrimination Policy.

#### **XL. EDUCATION**

The College provides programs and training to the college campus on domestic, dating, and sexual violence, and stalking on an ongoing basis. Love Your Body week, Denim Day and the Survivor’s week programs are examples of broad reach programs facilitated by the Counseling and Health Services Center, in this area. Specific training is provided to Campus Safety Officers in responding to reports of such issues both in progress or having occurred. This training includes basic trauma informed care training. Residence Life along with Campus Safety provide training to the Community Advisors on signs of these types of situations and how to respond to them in their role.

## **XLI. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS**

The College retains discretion to retain and appoint suitably qualified persons who are not College employees to fulfill any function of the College under this policy, including, but not limited to, the investigator, hearing officer, informal resolution officer, and/or appeals officer.

The College also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given College official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, informal resolution officer, and appeals officer, may, in Alverno College's discretion, be delegated by such College official to any suitably qualified individual and such delegation may be recalled by the College at any time.

## **XLII. TRAINING**

The College will ensure that College officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, informal resolution facilitators, College provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

## **XLIII. RECORDKEEPING**

The College will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in Alverno College's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

## **XLIV. DISCRETION IN APPLICATION**

The College retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if Alverno College's interpretation or application differs from the interpretation of the parties.

Despite Alverno College's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the College retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the College retains discretion to revise this policy and the Hearing

Procedures at any time, and for any reason. The College may apply policy revisions to an active case provided that doing so is not clearly unreasonable.