

# **Title IX & Equity Procedures**



**Delta College**

Delta College developed these Procedures in order to comply with the newly-revised requirements of the 2024 Title IX Regulations. This policy was adapted and modified from an ATIXA model policy and is used with permission. Based on the ATIXA 2024 One Policy, One Procedure (1P1P) Model. © 2024 ATIXA. All other rights reserved.

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

# Title IX & Equity Procedures



## Table of Contents

1. NOTICE OF NONDISCRIMINATION .....	5
1. DEFINITIONS .....	6
2. PROCEDURES .....	8
a. APPLICABLE SCOPE .....	8
b. TITLE IX COORDINATOR/EQUITY OFFICER .....	8
c. INDEPENDENCE AND CONFLICT OF INTEREST .....	9
d. MANDATED REPORTERS .....	9
e. FILING A COMPLAINT .....	10
f. SUPPORTIVE MEASURES .....	11
g. EMERGENCY REMOVAL .....	12
h. PROMPTNESS .....	13
i. CONFIDENTIALITY/PRIVACY .....	13
j. JURISDICTION OF THE COLLEGE .....	14
k. PROHIBITED BEHAVIORS.....	14
l. TIME LIMITS ON REPORTING .....	19
m. RETALIATION.....	20
n. FALSE ALLEGATIONS AND EVIDENCE.....	20
o. Title IX Coordinator/Equity Officer Authority to Initiate Complaint.....	20
p. FEDERAL WARNING AND REPORTING OBLIGATIONS .....	21
q. AMNESTY .....	22
r. PRESERVATION OF EVIDENCE .....	22
s. TITLE IX PROCESS.....	23
I. Notice/Complaint.....	23
II. Dismissal .....	24
III. Advisors .....	25
IV. Resolution Processes.....	<b>Error! Bookmark not defined.</b>
V. Formal Grievance Process Participants .....	<b>Error! Bookmark not defined.</b>
VI. Recording of Interviews/Hearings .....	31
VII. Investigation Process.....	31
VIII. Role and Participation of Witnesses .....	32
IX. Investigation Evidentiary Considerations .....	32

X. Title IX Hearing.....	32
XI. Sanctions .....	37
XII. Withdrawal or Resignation while Charges Pending .....	39
XIII. Appeals .....	40
XVI. Long-Term Remedies .....	42
<b>3. RECORDKEEPING .....</b>	<b>43</b>
<b>4. REVISION OF THIS POLICY .....</b>	<b>43</b>

# 1. NOTICE OF NONDISCRIMINATION

Delta College does not discriminate on the basis of race, color, national origin, ethnicity, religion, sex (including gender identity or expression, sexual orientation, sex stereotypes, sex characteristics, pregnancy, childbirth, or a related condition), age, height, weight, familial status, marital status, military service, veteran status, genetic information, disability, or any other legally protected basis, and prohibits unlawful discrimination, including harassment and retaliation, in any education program or activity that it operates, including in admission and employment.

Any Delta College faculty member, employee, student or visitor who acts to deny, deprive, or limit the educational, employment, social access, opportunities, and/or benefits of any member of the Delta College community on the basis of membership in a legally-protected classification is in violation of state and federal law and College Policy.

Any person may report unlawful discrimination (whether or not the person reporting is alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator/Equity Officer . A report may be made at any time (including during non-business hours). All Delta College faculty and employees (including student-employees), other than those deemed Confidential Employees are Mandated Reporters and are expected to promptly report all known details of actual or perceived discrimination, harassment, and/or retaliation to the Title IX Coordinator/Equity Officer.

Delta College will promptly and effectively address any such discrimination which it has knowledge using the resolution process outlined below.

# 1. 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 assist with the hearing, if necessary.
- *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* means a verbal or written report by a Complainant or 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.
- *Determination*: A conclusion by the standard of proof (preponderance of evidence) that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Grievance Process* is a method of 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 and §106.46).
- *Decision-Maker* refers to those who have decision-making and sanctioning authority within the College’s Grievance process. A Decision-Maker will also preside over hearings, when necessary.
- *Informal Resolution Facilitator* means the person assigned by the College to facilitate the Informal Resolution 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.
- *Parties* include the Complainant(s) and Respondent(s), collectively.

- *Protected class* refers to groups of people who are legally protected from harm or harassment due to a shared characteristic.
- *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.
- *Sex Discrimination* is the umbrella category including the offenses of sexual harassment, gender-based 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.

## 2. PROCEDURES

### a. APPLICABLE SCOPE

The core purpose of this policy is the prohibition of sex discrimination and/or discrimination based on status in a protected class, based on applicable state and federal law. Sometimes, discrimination 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.

This procedure is effective August 1, 2024 and applies to conduct that occurs on or after August 1, 2024. Conduct that occurred prior to August 1, 2024 is subject to the applicable procedures at the time the conduct occurred. For access to those procedures, please contact the Title IX Coordinator/Equity Office.

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 the policies and procedures of their employers, which must substantively comply with Delta College's Title IX and Equity Policy and Procedures. 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/EQUITY OFFICER

The Title IX Coordinator/Equity Officer is responsible for providing comprehensive nondiscrimination education and training; coordinating Delta College's timely, thorough and fair response, investigation and resolution of all alleged prohibited conduct under the title IX & Equity Policy, and monitoring the effectiveness of these procedures to ensure an education and employment environment free from discrimination, harassment and retaliation.

#### **Allie Martinez, Title IX Coordinator/Equity Officer**

1961 Delta Road, J101  
University Center, MI 48710  
**Phone:** (989) 686-9547  
**Email:** [equityoffice@delta.edu](mailto:equityoffice@delta.edu)

#### **External Contact Information**

Inquiries about the application of federal civil rights laws to Delta College may also be addressed to:

#### **Office for Civil Rights (OCR)**

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



For Complaints involving conduct experienced by an employee:

**Equal Employment Opportunity Commission (EEOC)**

Detroit Field Office  
Patrick V. McNamara Building  
477 Michigan Avenue  
Room 865  
Detroit, MI 48226  
Phone: 313-774-0020

**c. INDEPENDENCE AND CONFLICT OF INTEREST**

The Title IX Coordinator/Equity Officer acts with independence and authority free from bias and conflicts of interest and oversees all resolutions under this policy and these procedures. Investigators, Advisors (trained by the College), Informal Resolution Facilitators, Decision-Makers and Appellates and designees 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 parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator/Equity Officer 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/Equity Officer, concerns should be raised with the Delta College President, Dr. Michael Gavin at [michaelgavine@delta.edu](mailto:michaelgavine@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/Equity Officer.

Reports of discrimination by the Title IX Coordinator/Equity Officer should be made the Delta College President, Dr. Michael Gavin at [michaelgavin@delta.edu](mailto:michaelgavin@delta.edu). Reports of discrimination by the President should be made to the Title IX Coordinator/Equity Officer, who will assign third-party representation that is free from conflict of interest.

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 (preponderance of evidence).

**d. MANDATED REPORTERS**

A Mandated Reporter is a College employee who has the duty to report incidents of discrimination that may violate this policy. The Title IX Coordinator/Equity Officer is also a Mandated Reporter who also has the responsibility to investigate and address reports of discrimination. All College employees, including student employees, with the exception of Confidential Employees (see below), are Mandated Reporters.

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/Equity Officer, the Mandated Reporter will also inform the Title IX Coordinator/Equity Officer 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 supportive measures 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/Equity Officer or designee.

When a complainant tells a Mandated Reporter about an incident of discrimination, 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/Equity Officer all relevant details about the alleged discrimination shared by the complainant, including:

- the name(s) of the complainant
  - including contact information and/or student ID, when available
- 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.

**Confidential Resources:**

To enable a person who does not wish to initiate action under these Procedures to access support and resources, Delta College has designated specific employees as Confidential Employees. Confidential Employees are not required to report actual or suspected discrimination, harassment, or retaliation in any way that identifies the Parties. They will, however, provide the person disclosing conduct that may violate this Policy with the title IX Coordinator/Equity Officers contact information.

Confidential Employees:

- on-campus licensed professional counselors
- Student Care Coordinator

In addition, individual unaffiliated with Delta College are not subject to this Procedure and will not have to disclose information to the institution without permission. This includes:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local law enforcement
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

**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/Equity Officer. 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/Equity Officer above in section 3-b Title IX Coordinator/Equity Officer.

2. Report online, using the reporting form posted at [https://cm.maxient.com/reportingform.php?DeltaCollege&layout\\_id=6](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 resolution. 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 Complaint means a verbal or written report by the Complainant or signed by the Title IX Coordinator/Equity Officer 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/Equity Officer 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 discrimination or retaliation.

The Title IX Coordinator/Equity Officer 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 complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator/Equity Officer 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/Equity Officer

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

## 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/Equity Officer and reviewed by College's Behavioral Intervention Review Board.
- 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 appeal the removal 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. An appeal will be received by the Title IX Coordinator/Equity Officer and assigned to an appellate for review. The appeal 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. An appeal must be requested within three (3) business days of notice of the emergency removal.
- c. A Respondent may be accompanied by an Advisor of their choice when meeting with the appellate.
- d. 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/Equity Officer, 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/Equity Officer, alternative coursework options may be pursued to ensure as minimal an academic impact as

possible on the parties.

II. Employees

The title IX Coordinator will work with Human Resources to make determinations regarding employee removals according to College Procedures.

h. PROMPTNESS

All allegations are acted upon promptly by the College once it has received notice or a 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 discrimination or retaliation; any Complainant, any individual who has been reported to be the perpetrator of 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.

#### Unauthorized Disclosure of Information

Parties and Advisors are prohibited from unauthorized disclosure of information obtained by Delta College through the Resolution Process, to the extent that information is the work product of the Delta College (meaning it has been produced, compiled, or written by Delta College for purposes of its investigation and resolution of a Complaint). It is also a violation of Delta College Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

### 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 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.

#### 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 extend these Procedures to off-campus and/or online conduct if the conduct contributed to creating unlawful discrimination or implicates a health or safety threat to College students, employees, or staff.

#### 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 sex discrimination or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### k. PROHIBITED BEHAVIORS

The following is a list of prohibited behaviors and their definitions. These definitions are compiled from different resources that are in compliance with all federal and state laws and regulations. Anyone experiencing any of the behaviors listed below is encouraged to report it immediately to the Title IX Coordinator/Equity Officer or to the DCDPS. Mandated reporters are required to report all known or

suspected prohibited behaviors listed below to the Title IX Coordinator/Equity Officer within 24 hours. Remedies, investigation of complaints and education and/or training will be provided in response.

**A. Discrimination**

Discrimination prohibited by this policy consists of treating someone differently with respect to matters involving employment, education, or participation in College activities based on the protected characteristic(s) listed in the Notice of Nondiscrimination.

In assessing whether given conduct is discriminatory under this policy, the College will consider whether the conduct adversely impacted an individual’s work or education environment and whether someone outside the protected class received more favorable treatment. If it finds that an adverse impact on one’s work or education environment occurred, the College will consider whether a legitimate, non-discriminatory reason for the complained of action exists.

**B. Harassment**

Harassment prohibited by this policy is a form of discrimination consisting of unwelcome verbal, written, graphic or physical conduct that: (1) is directed at an individual or group of individuals on the basis of the individual or group of individuals’ actual or perceived membership in a protected class; and (2) is sufficiently severe or pervasive so as to interfere with an individual’s employment, education or academic environment or participation in College programs or activities; or, creates a working or learning that a reasonable person would find intimidating, offensive or hostile.

To constitute prohibited harassment, the conduct must be both objectively and subjectively harassing in nature. Harassment may include, but is not limited to, verbal or physical assaults, threats, slurs, or derogatory or offensive comments that meet the definition set forth in this policy. Harassment does not have to be targeted at a particular individual in order to create a harassing environment, nor must the conduct result in a tangible injury to be considered a violation of this policy. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs, and the status of the individuals involved (e.g., supervisor and employee).

**C. Sex-Based Discrimination**

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

- 1) Quid Pro Quo:
  - a. an employee of the recipient,
  - b. conditions<sup>1</sup> 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, or
  - d. pervasive, and
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the College’s education program or activity.<sup>2</sup>

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<sup>1</sup> Implicitly or explicitly.

<sup>2</sup> 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 act<sup>3</sup> directed against another person<sup>4</sup>,
- without the consent of the Complainant,
  - including instances in which the Complainant is incapable of giving consent.<sup>5</sup>
  - 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.

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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.

<sup>3</sup> 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.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person’s will (non-consensually),
- or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>4</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

<sup>5</sup> This definition set is not taken from SRS/NIBRS verbatim.



- 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) <sup>5</sup>Gender-Based Harassment: Gender-Based harassment includes acts that do not involve conduct of a sexual nature, but which is unwelcome conduct based on a person's actual or perceived sex, including harassing conduct based on a student's gender expression, gender identity, transgender status, gender transition, or nonconformity with sex stereotypes. It includes behaviors that are verbal, nonverbal, graphic, physical aggression, intimidation, or hostile conduct which is sufficiently severe, persistent, or pervasive that interferes with or limits a person's ability to participate in or benefit from the educational or work programs or activities.

- 7) 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.

### **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 BDSM<sup>6</sup> 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.

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<sup>6</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Please note that these Procedures apply to conduct that occurred on or after August 1, 2024. Conduct that occurred prior to August 1, 2024, regardless of when reported, is subject to the applicable procedures in place at the time.

#### 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 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/Equity Officer 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. Title IX Coordinator/Equity Officer Authority to Initiate Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator/Equity Officer will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator/Equity Officer will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if Delta College cannot ensure equal access without initiating a Complaint. The Title IX Coordinator/Equity Officer will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination would occur if a Complaint is not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is a Delta College employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;

- Whether Delta College could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator/Equity Officer may consult with appropriate Delta College employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator/Equity Officer initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## 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 discrimination, the Title IX Coordinator/Equity Officer will also be informed, unless disclosed 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 discrimination crimes immediately to the Delta College Public Safety Department or the Title IX Coordinator/Equity Officer 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 discrimination, particularly sexual assault, is critical to potential criminal prosecution and to obtaining restraining orders, and is time-sensitive. Delta College will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

### Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

## s. TITLE IX PROCESS

### I. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator/Equity Officer of an alleged violation of the Policy, the Title IX Coordinator/Equity Officer 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/Equity Officer or designee will conduct an initial assessment as soon as possible. The initial assessment will include:

##### a. Assessing whether the reported conduct may reasonably constitute a violation of the Policy.

- If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.

##### b. Determining whether Delta College has jurisdiction over the reported conduct, as defined in the Policy.

- If the conduct is not within Delta College’s jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate office for resolution.
- Offering and coordinating supportive measures for the Complainant, as applicable.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, in writing, a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent, in writing, of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

#### 2. Notice of Investigation and Allegations

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written NOIA. 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 allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

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 right 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.
- A link to Delta college's VAWA Brochure

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.

## II. Dismissal

The College may dismiss a complaint or any allegations therein if, at any time during the investigation or resolution process, one or more of the following grounds are met:

- 1) Delta College is unable to identify the Respondent after taking reasonable steps to do so
- 2) Delta College no longer enrolls or employs the Respondent
- 3) A Complainant voluntarily withdraws any or all of the allegations in the complaint, and the Title IX Coordinator/Equity Officer declines to initiate a complaint
- 4) Delta College determines the conduct alleged in the complaint would not constitute unlawful discrimination, harassment, or retaliation, if proven.



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. 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.

The Title IX Coordinator/Equity Officer will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from the College, the College will have trained the Advisor and familiarized them with the Resolution Process.

Delta 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, Delta College is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator/Equity Officer with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the Title IX Coordinator/Equity Officer will agree to copy both the party and their Advisor on all communications.

Advisors appointed by the institution cannot be confidential employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

For parties who are legally-entitled to union representation, Delta college will allow the 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.

#### 1. 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.

#### 2. Pre-Interview Meetings

Advisors may request to meet with the Title IX Coordinator/Equity Officer 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.

#### 3. 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 advisee<sup>7</sup> 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/Equity Officer will determine how to address the Advisor's non-compliance and future role.

#### 4. 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/Equity Officer 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.

#### 5. 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.

#### 6. 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

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<sup>7</sup> Subject to the state law provisions or College policy above.

as may be convenient and available.

#### 7. 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/Equity Officer 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/Equity Officer 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.

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.

## IV. Informal Resolution

Informal Resolution must be elected and agreed upon by all parties. Three options for Informal Resolution are detailed in this section, and the 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/Equity Officer 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;
- Accepted Responsibility: When the Respondent accepts responsibility for violating policy, and desires to accept a sanction(s) and end the resolution process;

A Complainant or Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator/Equity Officer. 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 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.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker. If an investigation is already underway, the Title IX Coordinator/Equity Officer has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

#### **a. Supportive Resolution**

The Title IX Coordinator/Equity Officer will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to Delta College's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

#### **b. Alternative Resolution**

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/Equity Officer 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 Title IX Coordinator/Equity Officer makes the ultimate determination of whether Alternative Resolution is available and will assign the case to an Informal Resolution Facilitator. The Informal Resolution Facilitator 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, and will submit the final report to the Title IX coordinator/Equity Officer for review.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Alternative Resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the Alternative Resolution.

The Title IX Coordinator/Equity Officer 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.

### **c. Respondent Accepts Responsibility for Alleged Violations**

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

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

## **b. Grievance Process Pool**

The Grievance Process relies on several individual roles to carry out the process. These roles are appointed by the College, assigned by the Title IX Coordinator/Equity Officer, and trained on an annual basis.

### **1. Investigator**

The Title IX Coordinator/Equity Officer, or designee if the Title IX Coordinator/Equity Officer 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

In a Formal Grievance Process, the Decision Maker will make a determination as to whether the Respondent is responsible for the alleged conduct based on a preponderance of evidence standard. The Decision Maker will also determine an appropriate sanction. If a hearing is required, the Decision Maker will serve as the Hearing Officer. As the Hearing Officer, they will conduct cross-examination and determine relevancy of all questions submitted by parties.

3. Appellate

The Appellate will hear appeals related to supportive measures, emergency removals, Formal and/or Hearing Resolution determinations and/or sanctions. For more information on the appeals process, see section J below.

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.

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 Pool are required to receive annual training on the following topics, as appropriate to their role:

- The scope of Delta College's Title IX & Equity 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

### c. 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.

### d. 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.

#### e. 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.

#### f. 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.

#### g. Title IX Hearing



## 1. Scheduling

Once the final investigation report is shared with the parties, the Title IX Coordinator/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).
- The Title IX Coordinator/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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.

## h. 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
FoodServices	X	X	X	X

Employee Class	Verbal Warning	Written Discipline/ Warning	Final Warning & Suspension	Termination/ Discharge
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/Equity Officer. 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/Equity Officer.

**i. 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/Equity Officer will reflect that status.

## j. 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/Equity Officer 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/Equity Officer, 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/Equity Officer, 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/Equity Officer within two (2) business days of the Notice of Outcome. The request will be evaluated by the Title IX Coordinator/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer 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/Equity Officer, 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/Equity Officer 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.

### 3. 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 Coordinator/Equity Officers, 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.

### 4. REVISION OF THIS POLICY

This Policy will be reviewed and updated annually by the Title IX Coordinator/Equity Officer. 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/Equity Officer 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/Equity Officer 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 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.*

