

# Aquinas College’s Procedures for Responding to Reports of Sexual Misconduct & Harassment

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## **GENERAL PROCEDURES**

### **A. Introduction**

Aquinas College has developed procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual misconduct or harassment. Aquinas values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved. These procedures are intended to affirm the College's commitment to fairness and equity in all aspects of the College's educational programs and activities, and to ensure compliance with federal civil rights laws. Aquinas College's Policy Prohibiting Sexual Misconduct & Harassment ("the Policy") prohibits all forms of sexual misconduct and/or harassment under Title IX of the Education Amendments of 1972, 2020 Title IX Regulations (34 CFR § 106), and Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA).

### **B. Applicable Scope**

These procedures apply to complaints alleging violations of the Policy. When an alleged violation of this policy is reported, the allegations are subject to resolution under "Formal Grievance Process Under 2020 Title IX Regulations ("Process A"), "Administrative Resolution for Student Respondents ("Process B")," or "Administrative Resolution for Employee Respondents ("Process C")," as determined by the Title IX Coordinator, and as detailed in these procedures.

When the Respondent<sup>1</sup> is a member of the Aquinas College community, a grievance process may be available regardless of the status of the Complainant,<sup>2</sup> who may or may not be a member of the College community. This community includes, but is not limited to students,<sup>3</sup> student organizations, faculty, administrators, staff, and third parties such as volunteers and invitees. These procedures may apply to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with these procedures.

### **C. Title IX Coordinator**

The Title IX Coordinator oversees implementation of the Title IX Policy and these procedures and has the primary responsibility of monitoring the College's compliance under Title IX of the Education Amendments of 1972 and 2020 Title IX Regulations (34 CFR § 106).<sup>4</sup> The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake, investigation, and resolution of reports, as well as the implementation of supportive measures designed to eliminate, remediate, and prevent sexual harassment.

### **D. Independence and Conflict of Interest**

The Title IX Coordinator manages the individuals that may assist with various aspects of administering the Policy ("Title IX team") and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under the Policy and these procedures. The

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<sup>1</sup> *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute a violation of the Policy.

<sup>2</sup> *Complainant* means an individual who is alleged to be the victim of conduct that could constitute a violation of the Policy.

<sup>3</sup> For the purpose of the Policy and these procedures, Aquinas College defines "student" as any person participating in, or attempting to participate in, the College's education programs or activities. For example, a student includes anyone 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.

<sup>4</sup> Anywhere these procedures indicate "Title IX Coordinator," Aquinas College may substitute a trained designee.

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Director of Human Resources at 616-632-2498 or [hr@aquinas.edu](mailto:hr@aquinas.edu). Concerns of bias or a potential conflict of interest by any other Title IX team member should be raised with the Title IX Coordinator.

### E. Reports/Notice of Prohibited Conduct Under The Policy

Aquinas College encourages anyone who experiences or becomes aware of sexual misconduct or harassment to report the incident to the College. The act of reporting carries no obligation on the part of a Complainant to pursue the Formal Grievance Process, as the College respects Complainant requests regarding complaints. Reports can be made through the following options:

1. File a complaint with, or give verbal notice to, the Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator:

Title IX Coordinator  
Academic Building 107  
(616) 632-2439  
[titleix@aquinas.edu](mailto:titleix@aquinas.edu)

2. Report online, using the reporting form posted at [www.aquinas.edu/titleix](http://www.aquinas.edu/titleix). Anonymous reports are accepted but may give rise to a need to investigate. Without a known Complainant, the College may be limited in its ability to obtain follow-up information and appropriately respond to the Complainant. The College seeks to provide supportive measures to all Complainants, which is impossible with an anonymous report.
3. The College has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual misconduct or harassment. The Policy identifies which employees are Mandated Reporters and outlines their obligations, accordingly. Discussing an incident involving any of these behaviors with a person who is a Mandated Reporter will also result in the concern being reported to the Title IX Coordinator.

Inquiries concerning any alleged policy violations may also be made externally to:

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

Office of Civil Rights ("OCR") – Regional Office  
U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115  
Phone: (216) 522-4970  
Facsimile: (216) 522-2573

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E-Mail: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

For complaints involving employees, external inquiries may also be made to: [Equal Employment Opportunity Commission](#) ("EEOC"):

EEOC – Headquarters  
131 M Street, NE  
Washington, DC 20507  
Phone: (202) 663-4900

EEOC – Detroit Field Office  
Patrick V. McNamara Building  
477 Michigan Avenue, Room 865  
Detroit, MI 48226  
Phone: (800) 669-4000  
Facsimile: (313) 226-4610

## F. Upon Receipt of a Report

Upon receipt of a report made to the Title IX Coordinator alleging a violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will inform the Complainant of the option to file a Formal Complaint with the College either at that time or in the future, and will assist them to do so, if desired.

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

- 1) Offer supportive measures because the Complainant does not want to file a Formal Complaint; and/or
- 2) Initiate the Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

## G. Initial Assessment

Upon receipt of a report or complaint to the Title IX Coordinator of an alleged violation of the policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps the College needs to take. The steps in an initial assessment can include:

1. The Title IX Coordinator seeks to determine if the Complainant wishes to make a Formal Complaint, and assists them in doing so, if desired.
  - a. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
2. Title IX Coordinator works with the Complainant to:
  - a. offer supportive measures,
  - b. ensure they are aware of the right to have an Advisor,
  - c. determine whether the Complainant prefers 1) a supportive and remedial response, 2) an Informal Resolution, or 3) the Formal Grievance Process.
    - i. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. The Complainant can elect to submit a Formal Complaint and initiate the Formal Grievance Process in the future.
    - ii. If an Informal Resolution is preferred, the Title IX Coordinator will determine if complaint is suitable for informal resolution and may seek to determine if the Respondent is willing to engage in informal resolution.

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- iii. If the Formal Grievance Process is preferred and a Formal Complaint is submitted, the Title IX Coordinator determines whether the alleged misconduct falls within the scope of the 2020 Title IX Regulations:
  - a. If it does, the Title IX Coordinator will initiate the Formal Grievance Process.
  - b. If it does not, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies and/or procedures may apply, and will refer the matter accordingly.<sup>5</sup>

## H. Privacy of Reports & Resolution Proceedings

Every effort is made to preserve the privacy of reports.<sup>6</sup> The College will not share the identity of any individual who has made a report or complaint of sexual misconduct and/or harassment; any Complainant, any individual who has been reported to be the perpetrator of Sexual Harassment or Retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under the Policy and these procedures.

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with college policy.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose related to Informal Resolution as outlined in these procedures.

## I. Supportive Measures

The Title IX Coordinator will offer and implement appropriate and reasonable Supportive Measures to the parties upon report or notice of alleged sexual misconduct and/or harassment as outlined below. Supportive Measures are non-disciplinary, non-punitive individualized services offered as

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<sup>5</sup> Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit the College's authority to address a complaint with an appropriate process and remedies.

<sup>6</sup> For these procedures, privacy and confidentiality each 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” to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College's response to notice under these procedures 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”). The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, and counselors (each a “Confidential Resource”). The law creates a privilege between certain health care providers, mental health care providers, attorneys, spouses, and others, with their patients, clients, and spouses. 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.

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appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education programs or activities, including measures designed to protect the safety of all parties or the College's educational environment and/or deter harassment and/or retaliation.

The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented. The College will maintain the privacy of the Supportive Measures, to the extent that maintaining such privacy would not impair the College's ability to provide the supportive measures.

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:

- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic adjustments, extensions of deadlines, or other course/program-related adjustments
- 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

Even when the Respondent is not a member of the Aquinas College community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

### **J. Promptness**

All allegations are acted upon promptly by the College once it has received a report. Our goal is to complete the resolution process approximately within a 60-90 business-day period. While ensuring the integrity and completeness of an investigation, as well as consideration of law enforcement and other pertinent factors of the investigation, temporary delay may occur. Pertinent factors may include accommodation of the availability of witness, account for university breaks or vacations, complexities of a case, (the number of witnesses and volume of information provided by the parties) or other legitimate reasons. If at any time the general timeframes for resolution outlined in these procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **K. Time Limits on Reporting**

There is no time limitation on reporting to the College. 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 reports that are 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.

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## **L. When a Complainant Does Not Wish to Proceed**

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

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinator's decision shall be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may also be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process, fairly and effectively.

When the College proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under these procedures irrespective of their level of participation.

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

In cases in which the Complainant requests no formal action and the circumstances allow the College to honor that request, the College will offer Supportive Measures, but will not otherwise pursue formal action.

If the Complainant initially elects to take no action, they can change that decision if they decide to pursue a Formal Complaint in the future. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

In certain cases, Informal Resolution options may exist, as discussed further in these procedures.

## **M. Interim/Emergency Actions**

Upon receipt of a report alleging a violation of the Policy or at any time prior to a final determination regarding responsibility for an alleged violation, the College may take temporary, non-punitive interim actions as determined necessary to protect the safety of the parties and the College community.

The College can further 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



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determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team, using its standard objective violence risk assessment procedures. The Respondent will have notice and an opportunity to challenge the decision immediately following removal. The College has the authority and discretion to place an employee on administrative leave during the pendency of an investigation, even where the requirements for an emergency removal are not met.

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

### **N. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. In particular, Complainants and potential Complainants are encouraged to consider the following:

#### Sexual Assault

- Seek free and confidential forensic medical assistance at the [YWCA West Central Michigan](#), 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 may impact evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

#### Stalking

- 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 e-mail 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 showing a 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.

### **O. Amnesty**

To encourage reporting and participation in the process, the College maintains a policy of offering reporting 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.

### **P. Recordkeeping**

Aquinas College will maintain for a period of at least seven years records of:

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1. Each 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; and
5. Any actions, including any supportive measures, taken in response to a report or formal complaint of prohibited behavior, 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 the 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.

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

### **Q. Federal Timely Warning and Statistical Obligations**

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

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

1. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
2. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
3. Violence Against Women Act-based crimes which include sexual assault, domestic violence, dating violence, and stalking; and
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

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

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

### **R. Revision of the Policy and these Procedures**

The Policy and these procedures supersede any previous policies addressing sexual misconduct and/or harassment and will be reviewed and updated periodically by the Title IX Coordinator. The

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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 or Human Resources Director (when an employee respondent is involved) may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in the Policy and these 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.

## **INFORMAL RESOLUTION OPTIONS**

### **A. Overview**

In some cases, where desired by all parties and determined appropriate by the College, an Informal Resolution process can be considered as an alternative to the Formal Grievance Process. Informal Resolution can include the following different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism, such as mediation, and/or
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process.

To initiate Informal Resolution, a Complainant needs to file a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

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

Prior to implementing Informal Resolution, the 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 the College.

The 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.

## **FORMAL GRIEVANCE PROCESS UNDER 2020 TITLE IX REGULATIONS (“PROCESS A”)**

### **A. Overview**

Aquinas College will act on any Formal Complaint under the Policy. Impacted parties will be sent a timely notice for any meetings at which they may be present. The procedures below apply only to qualifying allegations of sexual misconduct and/or harassment. When an allegation does not fall within the jurisdiction of the Formal Grievance Process, as determined by the Title IX Coordinator, it may be subject to other resolution processes.

Aquinas College uses the Formal Grievance Process to determine whether the Policy has been violated. This is a prompt, fair, and impartial process from the initial investigation to the final determination. All proceedings are conducted in a manner that is consistent with these procedures and transparent to impacted parties. If a violation is found, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual misconduct and/or harassment, their potential recurrence, or their effects.

### **B. Filing a Formal Complaint**

Filing a Formal Complaint initiates the Formal Grievance Process. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator, alleging a policy violation by a Respondent and requesting that Aquinas College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in these procedures, 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 portal provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

If documentation of a Formal Complaint 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.

#### **1. *Dismissal of Complaint (Mandatory and Discretionary)***<sup>7</sup>

The College must dismiss a Formal Complaint or any allegations therein, if any time during the investigation or hearing it is determined that:

- i The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in the Policy, even if proved; and/or
- ii The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by registered student organizations), and/or the College does not exercise substantial control of the Respondent; and/or
- iii The conduct did not occur against a person in the United States; and/or
- iv At the time of filing a Formal Complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the College-

The College may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- i A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- ii The Respondent is no longer enrolled in or employed by the College; or

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<sup>7</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

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- iii Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by either party under the appeal section of these procedures.

### **2. Counterclaims**

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

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

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

### **3. False Allegations and Evidence**

Deliberately false and/or malicious accusations under the Policy and these procedures are serious offenses 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 may be subject to discipline.

### **C. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose.<sup>8</sup> The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>9</sup> While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties at any meeting and/or proceeding, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

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

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses.

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<sup>8</sup> This could include an attorney, advocate, or support person (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. "Eligible" means the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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

Under certain circumstances, the College may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

## **1. Advisor Role in Hearing**

In compliance with the 2020 Title IX Regulations (34 CFR § 106), the College provides each party the opportunity to engage in a form of indirect questioning of the other party and any witnesses present at the hearing, conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

## **D. Notice of Investigation**

The Title IX Coordinator will provide written notice of the investigation (the "NOI") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOI is also copied to the Complainant, who will be given advance notice of when the NOI will be issued to the Respondent.

The NOI will include:

- a) A meaningful summary of all allegations,
- b) The identity of the involved parties (if known),
- c) The precise misconduct being alleged,
- d) The date and location of the alleged incident(s) (if known),
- e) The specific policies implicated,
- f) A description of the applicable procedures, including the potential sanctions/responsive actions that could result,
- g) A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- h) 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,
- i) A statement about the College's policy on retaliation,
- j) Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- k) A statement informing the parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- l) An instruction to preserve any evidence that is directly related to the allegations.

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

The NOI will be made in writing and may be delivered by one or more of the following methods: in person or e-mailed to the parties' college-issued e-mail accounts. Once emailed and/or received in person notice, will be presumptively delivered.

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## **E. Appointment of Investigator(s)**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation. The Investigator may be a trained College official or a qualified external investigator.

## **F. Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigator will notify and seek to meet separately with the complainant, the respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including without limitation, electronic or other records of communications between the parties or witness (via voice-mail, text message, email and social media sites), photographs (including those stored in computers, phones, tablets, etc.), and medical records (subject to the consent of the applicable party).

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.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## **G. Draft Investigation Report**

The investigator(s) will write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.

Prior to the conclusion of the investigation, parties will be provided with 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 the 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.

## **H. Final Investigation Report**

The Investigator(s) will incorporate any relevant feedback, make any necessary revisions, and finalize the report. The final investigation report is then shared with all parties and their Advisors through secure electronic transmission or hard copy. The parties are also provided with a file of any directly related evidence that was not included in the report. Once the final investigation report is issued, the matter will be referred to a hearing



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## I. Evidentiary Considerations

Neither the investigation nor the hearing will consider: (1) incidents not relevant<sup>10</sup> or not directly related<sup>11</sup> to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's 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.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Any witness scheduled to participate in the hearing must have been first interviewed by the investigator(s) during the investigation. Any evidence offered at the hearing must have been submitted to investigator(s) during the investigation.

## J. Hearing Decision-maker(s)

At their discretion, the Title IX Coordinator will designate a single Hearing Decision-maker or a three-member panel. Decision-maker(s) may be trained College officials or qualified external individuals. The Decision-makers will not have had any previous involvement with the investigation. The Title IX Coordinator may serve as an administrative facilitator of the hearing if their previous roles in the matter do not create a conflict of interest.

## K. Notice of Hearing

The hearing will be scheduled and held at least ten (10) business days from when the final investigation report is sent to the parties, unless both parties and the Decision-maker agree to an expedited timeline. The Title IX Coordinator will send notice of the hearing to the parties. Once e-mailed and/or received in person, notice will be presumptively delivered. The notice will include the date, time, and location of the hearing, along with other information pertinent to the hearing.

## L. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing. Additionally, the Title IX Coordinator can arrange to use technology to allow remote participation for some or all attendees without compromising the fairness of the hearing.

### 2. Joint Hearings

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

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings,

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<sup>10</sup> "Relevant" evidence is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint, but shall exclude any evidence that is not "directly related" as defined in these procedures.

<sup>11</sup> "Directly related" evidence is evidence connected to the complaint, but which is neither inculpatory (tending to prove an issue in the complaint) nor exculpatory (tending to disprove an issue in the complaint) and cannot be relied upon by the Decision-maker(s).

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separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

### **M. Pre-Hearing Preparation**

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence.

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

### **N. Pre-Hearing Meetings**

The Chair may convene pre-hearing meetings with the parties and their Advisors to invite them to submit the questions the parties wish to ask at the hearing, so that the Chair can rule on their relevance ahead of time. 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 statements offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing.

### **O. Hearing Procedures**

At the hearing, the Decision-maker(s) will have the authority to hear and make determinations of responsibility on all allegations of sexual misconduct and/or harassment and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual misconduct and/or harassment, even though those collateral allegations may not specifically fall within the Policy, with appropriate notice to the parties.

Participants at the hearing will include the Hearing Chair, any additional Decision-maker(s), the hearing facilitator, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

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## **P. Statements and Questioning**

Parties and witnesses will submit to indirect questioning by the Decision-makers and then by the parties through their Advisors. All questions are subject to a relevance determination by the Chair, who has final say on all questions and determinations of relevance. Any party or witness may choose not to answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer questions.

If a party's Advisor of choice refuses to comply with the Chair's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a college-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to ask questions on behalf of that party.

## **Q. Recording Hearings**

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

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## **R. Deliberation, Decision-Making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote of the panel of Decision-makers is required to determine the finding. The preponderance of the evidence standard of proof is used.

The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers will review any previously submitted party impact statements and any pertinent conduct history and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions. This statement will be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations. Parties will be notified if the Title IX Coordinator extends this window.

## **S. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome, which includes the final determination, rationale, and any

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sanction(s) (if applicable), will be shared simultaneously with the parties and their Advisors within three (3) business days of receiving the deliberation statement.

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

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

### **T. Sanctions/Corrective Actions**

Factors considered when determining sanctions may include:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the sexual misconduct and/or harassment;
- The need for sanctions/responsive actions to prevent the future recurrence of sexual misconduct and/or harassment;
- The need to remedy the effects of the sexual misconduct and/or harassment on the Complainant and the community;
- Any other information deemed relevant by the Decision-maker(s).

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

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

#### **3. Student Sanctions/Corrective Actions**

For student Respondents sanctions can include but are not limited to a written warning, probation, suspension or expulsion from Aquinas College, and/or other actions as deemed appropriate.

#### **4. Employee Sanctions/Corrective Actions**

For employee Respondents sanctions can include but are not limited to a written warning, a performance improvement plan, suspension, termination from Aquinas College, and/or other actions as deemed appropriate.

#### **5. Failure to Comply with Sanctions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript.

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

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## U. Withdrawal, or Resignation While Charges Pending

### 1. Students

Should a student Respondent permanently withdraw from Aquinas College, the College may dismiss the Formal Complaint or any allegations therein, at any time during the investigation or hearing.

If the Formal Complaint is dismissed, 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 misconduct and/or harassment. The student who withdraws or leaves while the process is pending may not return to Aquinas College. Admissions will be notified that they cannot be readmitted, and they may also be barred from Aquinas College property and/or events.

If the resolution process continues and the student is found in violation, that student is not permitted to return to the College unless and until all sanctions have been satisfied.

### 2. Employees

Should an employee Respondent resign with unresolved allegations pending, the College may dismiss the Formal Complaint or any allegations therein, at any time during the investigation or hearing.

If the Formal Complaint is dismissed, 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 misconduct and/or harassment. The employee who resigns with unresolved allegations pending is not eligible for rehire with Aquinas College, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## V. Appeals

Any party may submit a Request for Appeal, in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will be appointed by the Title IX Coordinator to Chair the appeal review.

The request for appeal will be forwarded to the Appeal Chair who will conduct a review for standing and determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### 3. Grounds for Appeal

Appeals are limited to the following grounds:

- i. A procedural irregularity that affected the outcome of the matter;
- ii. 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
- iii. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

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

If any of the grounds in the Request for Appeal meet the grounds in these procedures, then the following parties will be notified in writing: the Complainant and Respondent, their respective Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s). These parties will be mailed, e-mailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

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

Neither party may submit any new requests for appeal after this period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Chair will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

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

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' college-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### ***4. Sanctions Status During the Appeal***

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

#### ***5. Appeal Considerations***

- Decisions on appeal are to be deferential to the original decision-maker, remanding only when there is clear error and a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

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- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- 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). When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where a substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status.

### **W. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented or in place of sanctions if none are determined applicable, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the behavior, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy/procedural modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

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

## **ADMINISTRATIVE RESOLUTION FOR STUDENT RESPONDENTS (“PROCESS B”)**

### **A. Overview**

Aquinas College will act on any complaint of violation of the Policy Prohibiting Sexual Misconduct & Harassment (“the Policy”) that is received by the Title IX Coordinator. Impacted parties will be sent a timely notice for any meetings at which they may be present.

Process B is applicable for Student Respondents only when Process A is inapplicable, or allegations subject to Process A have been dismissed, as determined by the Title IX Coordinator, and as outlined in these procedures.

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct prohibited in the Policy.

Administrative Resolution is a prompt, fair, and impartial process from the initial investigation to the final determination.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 24 hours in advance of an interview. Advanced notice facilitates the parties’ ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, a list of all policies allegedly violated, and a description of the applicable procedures, 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 Aquinas College records, or emailed to the parties’ Aquinas College-issued or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

Aquinas College aims to complete all investigations within a ninety (90) business day period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate. Aquinas College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

Once the decision is made to commence an investigation, the Title IX Coordinator will appoint one or more Investigators, who may be a trained College official or a qualified external investigator, usually within five (5) business days of determining that an investigation should proceed.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.



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

## B. Advisors

Each party has an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose.<sup>12</sup> The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>13</sup> While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties at any meeting and/or proceeding, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Parties whose Advisors are disruptive or who do not abide by Aquinas College policies and procedures may face the loss of that Advisor and/or possible policy violations.

Upon written request of a party, Aquinas College will copy the Advisor on all communications between the College and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

## C. Investigation

The Investigator(s) typically takes the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with institutional partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
  - If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation (NOI) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOI accordingly and provide it to the parties.
- Provide the parties with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish for the Investigator(s) to ask the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline

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<sup>12</sup> This could include an attorney, advocate, or support person (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>13</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. "Eligible" means the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all relevant evidence
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 business days and incorporate that response, if any, into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator or legal counsel for review and feedback
- Provide the final report to the Title IX Coordinator with one of two options:
  - Include a recommendation on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred, OR
  - Gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation.

### **D. Determination**

Within two to three (2-3) business days of receiving the Investigator's final report, Title IX Coordinator or a trained, designated Decision-maker reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

The recommendation of the Investigator(s) should be strongly considered but is not binding on the Title IX Coordinator or Decision-maker. The Title IX Coordinator or Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

The Title IX Coordinator then provides the parties with a written Notice of Outcome in a timely manner to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties

### **E. Additional Details of the Resolution Process**

#### **6. *Witness Responsibilities***

Witnesses (as distinguished from the parties) who are students, faculty, or staff of Aquinas College are expected to cooperate with and participate in Aquinas College's investigation and resolution process. A witness's failure to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may be subject to discipline.

#### **7. *Remote Processes***

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, Aquinas College makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

#### **8. *Recording***

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No unauthorized audio or video recording of any kind is permitted during the resolution process. The investigators and decision makers may create an audio recording of meetings for expediency and to ensure accuracy of the educational record when producing the necessary documentation for the process. The meeting participants are informed at the start that the meeting will be audio recorded. This recording is the sole property of Aquinas College.

### **9. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **10. Sexual History/Patterns**

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

### **11. Previous Allegations/Violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

### **12. Notice of Outcome**

If the Respondent admits to the violation(s), or is found in violation, the Decision-makers, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the sexual misconduct and/or harassment; prevent its recurrence; and remedy the effects of the behavior, both on the Complainant and the community.

The Title IX Coordinator simultaneously informs the parties of the determination within two to three (2-3) business days of the resolution. Notifications are 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 Aquinas College records; or emailed to the parties' Aquinas College-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notice of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which Aquinas College is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent the Aquinas College is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

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Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notice of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal, as outlined in these procedures.

### **F. Sanctions**

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual misconduct and/or harassment
- The need for sanctions/responsive actions to prevent the future recurrence of sexual misconduct and/or harassment
- The need to remedy the effects of the sexual misconduct and/or harassment on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator

Sanctions imposed are implemented immediately unless the Title IX Coordinator delays their implementation in extraordinary circumstances, pending the outcome of any appeal. For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during the pendency of any appeal.

The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

#### **1. Student Sanctions/Corrective Actions**

For student Respondents sanctions can include but are not limited to a written warning, probation, suspension or expulsion from Aquinas College, and/or other actions as deemed appropriate.

#### **2. Failure to Comply with Sanctions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's official transcript.

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

### **G. Withdrawal or Resignation While Charges are Pending**

#### **1. Students**

Should a student withdraw while the student has an allegation pending for violation of the Policy, Aquinas College may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

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## H. Appeals

Any party may submit a Request for Appeal, in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will be appointed by the Title IX Coordinator to Chair the appeal review.

The request for appeal will be forwarded to the Appeal Chair who will conduct a review for standing and determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### 1. *Grounds for Appeal*

Appeals are limited to the following grounds:

- i. A procedural irregularity that affected the outcome of the matter; and
- ii. 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.

If any of the grounds in the Request for Appeal meet the grounds in these procedures, then the title IX Coordinator will share the request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3 business days).

Within five (5) business days of receiving any responses from parties and appropriate persons, the Appeal Chair will render a decision. Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.

A Notice of Appeal Outcome will be simultaneously sent to parties in writing, and in accordance with the standards for Notice of Outcome as defined above.

### 2. *Appeal Considerations*

- Decisions on appeal are to be deferential to the original decision-maker, remanding only when there is clear error and a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- 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). When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where a substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.

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- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status.

### **I. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented or in place of sanctions if none are determined applicable, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the behavior, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy/procedural modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

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

## **ADMINISTRATIVE RESOLUTION FOR EMPLOYEE RESPONDENTS (“PROCESS C”)**

### **A. Overview**

Aquinas College will act on any complaint of violation of the Policy Prohibiting Sexual Misconduct & Harassment (“the Policy”) that is received by the Title IX Coordinator.

“Process C” is a general term that refers to resolution processes maintained by Human Resources that are applicable to allegations involving Employee Respondents. Process C is applicable only when Process A is inapplicable, or allegations subject to Process A have been dismissed, as determined by the Title IX Coordinator, and as outlined in these procedures. In these instances, Employee Respondents will be referred to the Director of Human Resources (or their designee) who determine the applicable resolution process.

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