Title IX Harassment Policy

Note: This policy was adopted by Boston College in compliance with the regulations promulgated under Title IX, effective August 14, 2020, and applies only to conduct occurring on or after this date. In the event of any changes or legal developments affecting these regulations, the University reserves the right to amend, suspend, or revoke this policy. In such event, the University will notify the Boston College community.

I. Introduction

Boston College strives to comply with all federal and state civil rights laws barring discrimination, including Title IX of the Education Amendments of 1972 ("Title IX"). The University is committed not only to compliance with these mandates, but to promoting a culture and values that these civil rights laws envision.

Title IX prohibits any person in the United States from being discriminated against on the basis of sex in educational programs and activities. The University has developed policies and procedures that prohibit such sex discrimination in all of its forms, including this Title IX Harassment Policy, which addresses harassment in compliance with the requirements of regulations promulgated under Title IX (34 CFR part 106). The University also maintains other policies that prohibit misconduct and discriminatory harassment, including the Discriminatory Harassment Policy, the Student Code of Conduct, and the Student Sexual Misconduct Policy. To the extent that alleged misconduct does not meet the definitions or scope of harassment covered by this Title IX Harassment Policy, or if such misconduct is discovered in the course of investigating Title IX Harassment, the University retains full authority to investigate and adjudicate that conduct under the University's other policies, as appropriate.

II. Title IX Harassment and Scope of this Policy

a. Scope

Title IX prohibits Sexual Harassment, including Sexual Assault, Dating Violence, Domestic Violence, and Stalking, all as defined below in accordance with the regulations promulgated under Title IX, if that conduct occurs in the United States and within the University's Programs or Activities (defined below) (collectively, "Title IX Harassment").

This policy applies to all members of the Boston College community, including faculty and staff, students, recognized groups, and anyone who is attempting to participate in University programs or activities. This policy also applies to alleged Title IX Harassment by third parties when their conduct is directed toward or otherwise affects or may affect Boston College community members participating in the University's Programs or Activities, though the ability of the University to respond to third-party conduct may be limited by the University's relationship with the third party.

In most cases, attempts to engage in conduct prohibited by this policy will be treated as instances of Title IX Harassment under this policy.

If alleged conduct that falls within the scope of this policy (and any conduct arising out of the same facts

and circumstances) would also violate other University policies, the University may elect to address all the conduct under the procedures set forth in this policy or may elect to address that conduct under the other applicable policy or policies, provided, however, the University may not discipline a student or employee for conduct that may constitute Title IX Harassment before that conduct is addressed under the grievance procedures or informal resolution process described in this policy.

b. Definitions

For the purposes of this policy, the following terms have the meanings given to them below. Some of these terms may have different meanings in other contexts, such as criminal statutes and other University policies. Conduct may fit within more than one definition below and may also implicate other University policies.

TITLE IX HARASSMENT includes, as specifically defined in 34 CFR §106.30**:**

Sexual Harassment, which is conduct on the basis of sex that involves one or more of the following:

- A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (also called *quid pro quo* harassment); or
- Unwelcome conduct that a reasonable person would perceive as so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Program or Activity.

Sexual Assault, which is any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent and including, without limitation, fondling and rape.

Dating Violence, which is violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.

Domestic Violence, which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic violence laws of Massachusetts, or by any other person against an adult or youth victim who is protected from that person's acts under such laws.

Stalking, which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.

Other Definitions:

CONSENT is the clear and voluntary agreement to engage in specific acts of sexual contact or activity, communicated through mutually understandable words or actions, as defined more fully in the Student Sexual Misconduct Policy. For the purpose of this policy, Consent and the related terms Incapacitation, Coercion, and Force, shall all have the meanings given to them in the Student Sexual Misconduct Policy, whether or not the parties involved are students.

COMPLAINANT means an individual who has reported being or is alleged to be the victim of conduct that could constitute Title IX Harassment. A Complainant must be participating in or attempting to participate (such as applicants for admission and athletic recruits) in a Program or Activity of the University at the time a Formal Complaint is filed.

RESPONDENT means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Harassment.

PROGRAM OR ACTIVITY broadly includes all operations of Boston College in the United States, including: (a) any academic, extracurricular, research, employment, or other program or activity operated by the University; (b) locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged Title IX Harassment occurred; (c) any building owned by the University; (d) any building owned or controlled by a student organization that is officially recognized by the University; and (e) activities occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the University.

III. Retaliation

It is a violation of this policy to engage, directly or indirectly, in any form of retaliation or intimidation in connection with reports or adjudications of Title IX Harassment. The Student Sexual Misconduct Policy includes some specific examples of conduct that may constitute retaliation (and would apply to retaliation under this policy, whether the person retaliating is a student or employee).

IV. Reporting Title IX Harassment

Any person may report Title IX Harassment, whether or not the person making the report is the person alleged to be the victim of conduct, and the University encourages prompt reports of any sexual harassment.

There is no time limit on reporting violations of this policy, however, the lapse of time may limit the University's ability to effectively investigate and fully respond to the complaint.

If the Respondent is a Boston College employee, faculty member, volunteer, or other non-student participating in a University Program or Activity, the report should be made to the University Title IX Coordinator, whose contact information is:

Name: Patricia Lowe

Title: Associate Vice President, Office for Institutional Diversity/University Title IX Coordinator
Office Address: 129 Lake Street, Suite 213, Chestnut Hill, MA 02467
Email Address: patricia.lowe@bc.edu
Telephone Number: 617-552-3334

If the Respondent is a Boston College student, the report should be made to the Student Affairs Title IX Coordinator, whose contact information is:

Name: Melinda Stoops
Title: Associate Vice President for Student Health and Wellness/Student Affairs Title IX Coordinator
Office Address: Maloney Hall, Suite 412, Chestnut Hill, MA 02467
Email Address: melinda.stoops@bc.edu
Telephone Number: 617-552-3482

The Student Sexual Misconduct Policy explains in more detail the responsibilities of employees who receive student reports of harassment. The University expects all faculty and staff (other than staff who are specifically designated as privileged and confidential resources) who become aware of sexual harassment occurring in University Programs and Activities to report it to the requisite Title IX Coordinator.

a. Initial Assessment and Response by Title IX Coordinator

Once notice of allegations of sexual harassment are provided to the University Title IX Coordinator or the Student Affairs Title IX Coordinator, who are the University officials with authority to institute corrective measures, the requisite Title IX Coordinator or deputy will conduct an Initial Assessment of the reported information by gathering information to determine whether this policy applies to the report and, if so, what form of resolution is reasonably available and appropriate. The Title IX Coordinator or deputy will promptly contact the Complainant to discuss the availability of Supportive Measures (as described below), consider the Complainant's wishes with respect to Supportive Measures, explain to the Complainant the process for filing a Formal Complaint, and coordinate the effective implementation of any Supportive Measures. Complainants have the right to receive resources, support, and appropriate Supportive Measures even if the Complainant does not wish to pursue a Formal Complaint under this policy or other applicable University policy.

The University also maintains confidential resources to assist community members who have experienced sexual harassment. Students may consult the Student Sexual Misconduct Policy for a list of these resources; employees may consult with the University Title IX website which provides information about the Confidential Resource Provider for employees.

b. Supportive Measures

Supportive Measures are non-disciplinary, non-punitive individualized services offered to the Complainant or Respondent as appropriate and reasonably available, and without fee or charge, regardless of whether a Formal Complaint has been filed. These measures are designed to restore or preserve equal access to the University's Program or Activity without unreasonably burdening the other

party, including measures designed to protect the safety of all parties and the University community, or deter sexual harassment.

Supportive Measures may include, but are not limited to:

- mutual restrictions on contact between the parties;
- changes in work or housing locations;
- modifications of work or class schedules;
- leaves of absence;
- access to counseling;
- pastoral care and support through Campus Ministry;
- extensions of deadlines or other course-related adjustments;
- campus escort services; and
- increased security and monitoring of certain areas of the campus.

The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining confidentiality would not impair the University's ability to provide the Supportive Measures.

A Complainant may remain anonymous for the purposes of receiving Supportive Measures. However, if a Complainant chooses to file a Formal Complaint, both parties will receive written notice about the conduct under investigation, which will include the identity of the Complainant.

c. Removal of Respondent

***Emergency Removal of Students*.** The University at all times retains the authority to remove a student-Respondent from the University or the University's Program or Activity on an emergency basis when it has been determined that the Respondent poses an immediate threat to the physical health or safety of any individual (including the Respondent) arising from the allegations of Title IX Harassment, including threats of physical self-harm. An emergency removal is not limited to cases involving an alleged Sexual Assault, but may also be warranted in matters arising from alleged Sexual Harassment, including verbal harassment. Nothing in this policy shall be deemed to limit the University's ability to remove a student on an emergency basis under other applicable University policies.

If at any time before or after a Formal Complaint is filed, the Dean of Students or designee believes that a physical health or safety issue may exist, the Dean of Students or designee will conduct a prompt individualized safety and risk analysis, in consultation with other appropriate administrators. This individualized analysis will consider the particular Respondent and the specific circumstances, and the finding will be based on whether (1) there is an immediate threat justifying an emergency removal; (2) the threat is to the physical health or safety of one or more individuals; and (3) the emergency situation specifically arises from the allegations of Title IX Harassment. In performing this analysis, the University will consider the applicability of disability laws and the appropriateness of other Supportive Measures in lieu of removal.

The University will provide the Respondent with notice and an opportunity to appeal an emergency removal decision immediately following the removal.

A decision to remove a Respondent from the University's Program or Activity on an emergency basis is not a determination of a Respondent's responsibility with respect to the allegations of Title IX Harassment and will not have bearing on the resolution of a Formal Complaint. No employee of the University who is involved in performing the safety and risk analysis or who hears any appeal of a removal decision may serve as an Investigator, Decision Maker, or Advisor (all as defined below) in connection with a Formal Complaint arising out of the same allegations.

Administrative Leave of Employees. After a Formal Complaint has been filed, the University retains the authority to place faculty and staff Respondents on administrative leave during the process of investigating and adjudicating the Complaint. If a Respondent is both a student and an employee of the University, the Respondent's removal from campus will be addressed under the procedures for emergency removal above.

d. <u>Filing a Formal Complaint</u>

The University will address the allegations in any Formal Complaint as described below.

To file a **Formal Complaint,** a Complainant must provide the requisite Title IX Coordinator a written, signed complaint, alleging sexual harassment against a Respondent and requesting that the University investigate the allegation. A Formal Complaint filed by a Complainant must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint. A Formal Complaint may be filed in person, by mail, or by electronic mail to the University Title IX Coordinator or the Student Affairs Title IX Coordinator, as appropriate. The contact information for the University Title IX Coordinator and Student Affairs Title IX Coordinator are provided above in Section IV.

If a Complainant does not wish to file a Formal Complaint, the University may nonetheless determine that it is appropriate to pursue a Formal Complaint in light of safety or other similar concerns (e.g., there are multiple, separate complaints against a single Respondent, or a matter involves allegations of particularly severe conduct). Upon this determination, the requisite Title IX Coordinator may sign a Formal Complaint requesting that the University investigate the alleged Title IX Harassment, but the Title IX Coordinator will not be a Complainant or otherwise a party to the grievance process. If the University decides to proceed with a Formal Complaint on its initiative, the University will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this policy.

Once a Formal Complaint is filed, the Title IX Coordinator will notify the Complainant of the grievance process under this policy, including any available informal resolution process.

Mandatory or Discretionary Dismissal of Formal Complaint. At any time prior to the commencement of a hearing, the University *<u>must</u>* dismiss a Formal Complaint for purposes of Title IX (and only such purposes) if the conduct alleged in the Formal Complaint:

- would not constitute Title IX Harassment even if proved;
- did not occur in a University Program or Activity; or
- did not occur in the United States.

Any mandatory dismissal of a Formal Complaint will not preclude the University from taking action to address the alleged conduct under any other applicable University policy, including, without limitation, the Student Code of Conduct, the Student Sexual Misconduct Policy, or the Discriminatory Harassment Policy.

In addition, the University *may* dismiss a Formal Complaint, or specific allegations included in a Formal Complaint, if at any time during the investigation or hearing:

- the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled or employed by Boston College; or
- specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein.

When a Respondent is no longer affiliated with the University, the University's ability to gather evidence and enforce any applicable sanctions will be limited, and accordingly, the University may, in its sole discretion, dismiss the Formal Complaint under these circumstances. Upon reaching a decision that all or part of a Formal Complaint will be dismissed, the University will promptly and simultaneously send a written notice of the dismissal to the Complainant and Respondent that includes the reasons for the decision. If the Complainant and Respondent are students or employees of the University, the dismissal notice will be sent to the parties through their University email accounts, and it is the responsibility of parties to regularly check their email accounts, with respect to this notice and all other notices under this policy. (If a Complainant or Respondent does not have a University email account, the University will use other reasonable notification means.) Either party may appeal any dismissal decision through the appeal procedures set forth in Section VII below.

e. Notice of Allegations

After the receipt of a Formal Complaint, the University will, as soon as practicable, provide a written notice to the Complainant and Respondent that provides the following:

- Notice of the University's grievance process under this policy, including any informal resolution process;
- Notice of allegations potentially constituting Title IX Harassment, including sufficient details known at the time, including, if known, the identities of the parties involved in the incident(s) of alleged Title IX Harassment, the conduct allegedly constituting alleged Title IX Harassment, and the date and location of the alleged incident(s);
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that tends to prove or disprove the allegations, whether obtained from a party or other source;
- If an informal resolution process will be made available, information about the process and the potential consequences to the parties for engaging in it; and

- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If the parties are students or employees of the University, the Notice of Allegations will be sent to the parties through their University email accounts. The University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations, the University will provide a supplemental notice of the additional allegations to the parties whose identities are known. The University will provide sufficient time for the parties to review a supplemental Notice of Allegations and prepare a response before any initial interview regarding the additional allegations.

f. Consolidation of Formal Complaints

The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

The University shall promptly notify the Parties if, in its sole discretion, it determines that matters should be consolidated.

V. Informal Resolution Process

At any time following receipt of the Notice of Allegations but before the conclusion of the Formal Grievance Process, the Complainant or Respondent may seek to pursue an informal resolution. The Title IX Coordinator(s) retain discretion to determine if an Informal Resolution Process is appropriate, and both parties must provide voluntary and written consent to engage in an Informal Resolution Process. No party shall be required to participate. *An Informal Resolution Process may not be used in cases where the Respondent is a faculty or staff member and the Complainant is a student*.

At any time prior to the conclusion of an Informal Resolution Process, the Complainant or Respondent may request to end the Informal Resolution Process and/or pursue the Formal Grievance Process. If an Informal Resolution Process is ended, any statements made or conduct by the parties during the Informal Resolution Process will not be disclosed to persons who are not participants in the Informal Resolution Process and may not be used, offered, or admitted in the Formal Grievance Process.

In some circumstances, either party may request to pursue an Informal Resolution Process after the start of a Formal Grievance Process. A change from a Formal Grievance Process to an Informal Resolution Process may occur only if the Formal Grievance Process has not yet concluded, and must be agreed upon by the Complainant and Respondent and approved by the requisite Title IX Coordinator.

When the Respondent is a student, the Informal Resolution Process may involve one or more of the following:

- Direct or indirect dialogue between parties, facilitated by a neutral mediator;
- Agreement to institutional remedies including but not limited to disciplinary, academic, housing, and co-curricular remedies;

- Agreement to abide by University Stay Away Orders;
- Agreement to participate in educational or training programs;
- Referral to supportive services or resources;
- Submission and/or receipt of an impact statement; and
- Other, as determined by the University.

When the Respondent is a staff or faculty member (and the Complainant is not a student), the Informal Resolution Process may involve one or more of the following:

- Direct or indirect dialogue between parties, facilitated by a neutral mediator;
- Agreement to employment remedies including but not limited to position adjustments, suspensions, or dismissal;
- Agreement to abide by no-contact directives;
- Agreement to participate in educational or training programs;
- Referral to supportive services or resources;
- Submission and/or receipt of an impact statement; and
- Other, as determined by the University.

The University will endeavor to complete the Informal Resolution Process in a timely manner. The length of the Informal Resolution process depends upon the complexity of the complaint, which resolution process the parties choose, and the active engagement of the parties. The University will provide in writing to the Complainant and Respondent any outcomes of the Informal Resolution Process. Any resolution developed and agreed upon by the parties through the Informal Resolution Process will be reflected in an agreement signed by the parties (a "Resolution Agreement"). Resolution Agreements for students will be maintained by Student Affairs and for faculty and staff by Human Resources, as well as the Office of the Provost for Resolution Agreements involving faculty. A Resolution Agreement between students will be enforced by the Office of the Dean of Students; a Resolution Agreement between faculty and staff members will be enforced by Human Resources and/or the Office of the Provost.

Once a complaint has been resolved through an Informal Resolution Process, and all terms of any Resolution Agreement have been fulfilled, the matter will be closed. Appeals of any Informal Resolution Process are not permitted. If a party fails to comply with the terms of a Resolution Agreement, the University may proceed to resolve the Formal Complaint through the Formal Grievance Process, and/or enforce the terms of the Resolution Agreement. Students who fail to comply with the terms of a Resolution Agreement may be subject to the University's Student Conduct process for failure to comply; employees may be disciplined.

VI. Formal Grievance Process

a. Overview

The formal grievance process will include an investigation of the complaint, followed by a live hearing, after which a determination of responsibility will be issued.

The University will endeavor to complete the grievance process in a reasonably prompt timeframe and no longer than ninety business (90) days after the filing of the Formal Complaint, provided, however,

that the timeframes included in this policy may be temporarily extended by the University for good cause and to ensure the completeness and integrity of the process. Circumstances that may constitute good cause to extend the process include, but are not limited to, the complexity and scope of the allegations and the investigation; the absence of a party, a party's Advisor, or a witness; the number of witnesses; the availability and cooperation of the parties and witnesses, the effect of concurrent law enforcement activity; the need for language assistance or accommodations of disabilities; extensions reasonably granted to the parties; and any intervening University exam periods, breaks, or holidays. The parties will be provided written notice of any delay or extension for good cause and the reasons for the action.

All parties and other participants are expected to be truthful during the grievance process, and may not knowingly make false statements or provide false information. The University retains the right to discipline any party or witness for making false statements or providing false information in accordance with any applicable University policy or condition of employment.

b. Advisor of Choice

During the investigation, the Complainant and Respondent may each have an Advisor of choice present at any meeting related to the reported Title IX Harassment ("Advisor"). The selection of an Advisor is at each party's discretion. If a party plans to have an Advisor present, the party must notify the Investigator at least two (2) business days before the meeting.

The role of the Advisor at any meeting during the investigation is limited in the same manner for both parties. Advisors may not ask questions, interject, coach, advocate for, or otherwise speak on a party's behalf during a meeting during the investigation. The party and Advisor can confer at any point during the meeting, but the Advisor may not formulate specific questions or statements for the party. Repeated violations of this policy may result in the Advisor being asked to leave the meeting.

In keeping with the University's obligation to resolve complaints of Title IX Harassment in a timely manner, the University reserves the right to proceed with any meeting during the investigation regardless of the availability of the party's Advisor.

c. Investigation

Investigations under this policy will be conducted by one or more internal and/or external impartial Investigators. In this policy, the term "Investigator" will be deemed to include all the investigators charged by the University to investigate the complaint.

The investigation will include one or more interviews with the Complainant, the Respondent, and relevant witnesses and will also include the gathering of available physical, documentary, and other relevant evidence. Complainant and Respondent will be provided an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence (i.e. evidence that tends to prove and disprove the allegations). The parties are expected to provide all relevant information, and may present written statements, identify witnesses, and submit other relevant evidence and lines of inquiry.

Once the investigation is complete, and before the Investigator completes the investigative report, the parties will have an equal opportunity to inspect and review any evidence obtained as part of the

investigation that is directly related to the allegations raised in the Formal Complaint, including (a) any evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and (b) inculpatory or exculpatory evidence, whether obtained from a party or any other source. Prior to the completion of the investigative report, the University will send to each party and the party's Advisor the evidence subject to inspection and review in a hard copy or electronic format, and the parties will have ten (10) business days from the date of receipt to submit a written response to the Investigator. The Investigator will consider the parties' responses, if any, before completing the investigative report, and may elect to share a party's responses with the other party. The University may require the parties and their advisers to agree to keep the evidence confidential and to use it only for the purpose of the Title IX grievance process.

After receipt and consideration of the written responses submitted by the parties, if any, the Investigator will prepare an investigative report that fairly summarizes the relevant evidence (and may include some or all of the parties' responses to the evidence), which will be sent to the parties and their Advisors at least ten (10) business days prior to the live hearing (described below) for review and written response. Any written response to the investigative report must be submitted to the University at least two (2) business days before the live hearing, and will be shared with the other party and the other party's Advisor.

d. <u>Live Hearing</u>

Following the completion of the investigative report, the University will conduct a live hearing before a decision maker, who will determine whether Title IX Harassment has occurred. The parties cannot waive the right to a live hearing. The hearing is not public, and the only individuals permitted to participate in the hearing are as follows:

i. Hearing Participants

Decision Maker. The University will appoint a single decision maker or a panel of decision makers, who may or may not be University employees, to serve as the hearing body (individually or collectively, the "Decision Maker"). No member of the hearing body will also have served as the Title IX Coordinator, the Investigator, or Advisor to any party, nor may any member of the hearing body serve as an Appeals Officer in the case. No Decision Maker will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to a particular case. Each Decision Maker will have received training on how to serve impartially, evidentiary issues (including issues of relevance), and any technology to be used at the hearing.

Advisors. The Complainant and Respondent each have the right to select an Advisor to accompany the party or appear at the hearing without the party if the party chooses not to attend the hearing. The parties are not permitted to conduct cross-examination at the hearing; it must be conducted by Advisors. Each party must submit to the University the name of their Advisor and the Advisor's relationship to the party at least ten (10) business days prior to the hearing, or must apprise the University that the party does not intend to have an Advisor present at the hearing. If a party informs the University that the party will not have an Advisor at the hearing, the University will provide an Advisor of the University's choosing to conduct cross-examination on behalf of that party at the hearing. The Advisor of choice for the hearing may be, but is not required to be, the same individual who acted as the Advisor during the investigation.

Complainant and Respondent. Although the University cannot compel the Complainant or Respondent to attend the live hearing, the University encourages both the parties to attend. The University may proceed with the hearing in the absence of a party and may reach a determination of responsibility in the party's absence.

In the event that a party chooses not to attend, a party's Advisor may nonetheless appear and conduct cross-examination, or the University will provide an Advisor for this purpose if a party's Advisor does not appear.

Witnesses. Witnesses may not be required to participate in the live hearing, but the University strongly encourages their participation.

ii. Hearing Process

In-Person or Virtual. Hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants to see and hear each other. At any party's request, cross-examination may occur with the parties in separate rooms using technology that enables participants to see and hear the person answering questions.

Record of Hearing. An audio or audiovisual recording and/or transcript of the hearing will be created and will be made available for the parties' inspection and review. Copies of the recording and/or transcript will not be provided to parties or Advisors.

Role of Advisors. Each party's Advisor will be permitted to directly, orally, and in real time ask the other party and any witnesses all relevant questions (subject to a relevancy determination by the Decision Maker) and follow-up questions. Prior to the hearing, the parties are encouraged to meet with their Advisors so each party may request and discuss with their Advisor the questions they would like asked of the other party and any witnesses.

Advisors may not interject, coach, advocate for, or otherwise speak on behalf of the party they represent while that party is being questioned.

Role of the Decision Maker. The Decision Maker is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. The Decision Maker may ask relevant questions of any party or witness at the beginning of the hearing or at any time during the hearing.

During questioning of parties and witnesses by each party's Advisors, the Decision Maker is responsible for determining, before any answer is provided by any party or witness, whether the question is relevant. The Decision Maker will briefly explain the basis for any decision to exclude a question as not relevant.

Certain categories of questions and evidence are considered irrelevant, regardless of whether they tend to make material facts more or less likely to be true, including information that relates to any party's medical, psychological, and similar records, evidence and information protected by a legally recognized privilege, and in most cases, the sexual history of the Complainant. Questions that are duplicative or

repetitive of questions already asked, including questions asked by the Decision Maker, may fairly be deemed not relevant and the Decision Maker may exclude them.

iii. Hearing Rules

Expectations of Participants. All hearing participants must conduct themselves appropriately and respectfully towards all other participants, and may not act or ask questions in a way that may be considered by a reasonable person to be abusive, intimidating, harassing, or disrespectful. The Decision Maker may address any misbehavior, including by adjourning the hearing and excluding the offending person, who may face additional sanctions under other University policies.

New Evidence. No new evidence, including new witness testimony, may be presented at the hearing, unless the evidence or testimony was not reasonably available to the party during the investigation. In that case, the new evidence must be brought to the attention of the Decision Maker prior to the hearing. The Decision Maker has the discretion to either stay the hearing to provide the other party with an opportunity to respond to the new evidence, or ask the Investigator to re-open the investigation for the limited purpose of addressing the new evidence, which each party shall have the opportunity to review as described in this policy.

Other. The University may establish additional or more specific hearing rules and procedures. Any additional rules or procedures will be provided to the parties and their hearing Advisors prior to the hearing.

e. Determination of Responsibility

The University uses a "preponderance of the evidence" standard, meaning that the Decision Maker will decide, based on the evidence that the Decision Maker may permissibly consider, whether it is more likely than not that the Respondent has engaged in Title IX Harassment. The Decision Maker may also determine, under the preponderance of evidence standard, that the Respondent is responsible for violations of other relevant University policies that address the conduct at issue, even if the Respondent is not found responsible for Title IX Harassment.

f. Remedies and Sanctions

If the Respondent is found responsible, the Complainant will be provided with remedies designed to restore or preserve equal access to University Programs and Activities, which may consist of the continuation of or new Supportive Measures as well as disciplinary sanctions on the Respondent. The requisite Title IX Coordinator may also determine that institutional remedies are appropriate, such as additional training.

If the Respondent is found responsible for Title IX Harassment, the Decision Maker may recommend (but not determine) sanctions, which will be determined by appropriate University administrators. In most cases this will include, for students, the Office of the Dean of Students; for faculty, the Respondent's Dean and/or the Provost; and for staff, the Vice President of Human Resources.

The University within its sole discretion will determine the appropriate sanction after considering the severity of the offense and the nature of the conduct. Consideration will also be given to preventing

further misconduct, remedying the effects on the Complainant and the University community, deterring similar misconduct, and promoting the safety and well-being of the University community.

For employees, sanctions may include, but not be limited to, training and formal discipline up to and including termination.

For students, less severe misconduct will generally result in less severe sanctions, such as disciplinary probation or University probation, or formative sanctions. More severe misconduct will generally result in more severe sanctions, such as removal from University housing, removal from specific courses or activities, suspension from the University, dismissal from the University, or withholding or delaying a degree. Typically, students found responsible for Sexual Assault are suspended or dismissed from the University. More about the student sanctioning process can be found in the Student Code of Conduct.

g. Written Determination

After the hearing, the Decision Maker will prepare a written determination of the outcome of the Formal Grievance Process, which will include the following:

- Identification of the allegations potentially constituting Title IX Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including (1) any notifications to the parties; (2) interviews with parties and witnesses; (3) site visits; (4) methods used to gather other evidence, and (5) hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Boston College's Program or Activity will be provided to the Complainant; and
- Procedures and permissible bases for the Complainant and Respondent to appeal.

The University will endeavor to provide the written determination within ten (10) business days of the hearing, and will notify the parties if more time will be required. The University will provide the written determination to the parties simultaneously.

VII. Appeal

The Complainant and the Respondent have equal rights to an impartial appeal from a determination of responsibility or from the dismissal of a Formal Complaint or allegation included in a Formal Complaint. Parties must submit an appeal within five (5) business days of receiving a written determination of responsibility or notice of dismissal, as applicable. Appeals must be written and submitted by the party rather than an Advisor or representative.

Appeals will be heard solely on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- 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; or

- 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 individual Complainant or Respondent that affected the outcome of the matter.

The University may, in its sole discretion, defer sanctions while an appeal is being considered.

If a party files an appeal, the University will as soon as practicable notify the other party in writing of the appeal and implement the appeals procedures equally for both parties.

An Appeals Officer will review the appeal. The Appeals Officer will be a trained individual free from conflicts of interest or bias, and will not be a Title IX Coordinator, Investigator, or Decision Maker who reached the determination of responsibility or dismissal. The Appeals Officer will review the appeal to determine if it meets the required grounds. In so doing, the Appeals Officer may consult with the Decision Maker, Investigator(s), and other individuals involved in the adjudication, and may review evidence and any reports. The Appeals Officer will provide both parties reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The Appeals Officer will endeavor to make a decision on the appeal within ten (10) business days of receiving the appeal. If the Appeals Officer requires additional time to reach a decision, the parties will be notified.

If the Appeals Officer determines that the party who filed the appeal has adequately established a permissible basis for the appeal, the Appeals Officer, acting in the Appeals Officer's sole discretion, will determine the appropriate next steps. For example, with respect to the dismissal of a Formal Complaint or any allegations, the Appeals Officer may determine that the complaint or allegations continue through the formal grievance process. With respect to a determination of responsibility, the Appeals Officer may require the case be re-heard in whole or in part by the original or a new Decision Maker or Investigator, may review the matter and determine that an adjustment in the findings or sanctions is appropriate, or may take any other action that the Appeals Officer reasonably deems appropriate.

The Appeals Officer will prepare a written decision describing the result of the appeal and the rationale for the result, which will be provided simultaneously to both parties. The decision of the Appeals Officer is final.

Approved: William P. Leahy, S.J.
Date: August 14, 2020
August 12, 2021 rev (to update for M.G.L. ch. 6 section 168D and case law)
September 12, 2022 rev