

## College Policy

### Prohibiting Sexual Harassment

---

#### I. COMMITMENTS and CONTACTS

##### A. Commitments

The mission of Concordia College is to influence the affairs of the world by sending into society thoughtful and informed men and women dedicated to the Christian life. To advance this mission and a core value of Being Responsibly Engaged in the World, Concordia is committed to providing a respectful, safe, and healthy environment for all students, employees, and guests. To that end, the College prohibits all forms of discrimination based on an individual's race, color, creed, national origin, gender, gender identity, gender expression, sexual orientation, age, religion, disability, marital status, familial status, veteran status, or status with regard to public assistance. The College also prohibits all forms of sexual harassment, including but not limited to sexual assault, sexual violence, and sexual exploitation, and all forms of dating violence, domestic violence, and stalking. These behaviors are not only injurious to the individuals against whom they are committed, they are also damaging to the Concordia Community. In addition, some forms of these behaviors are crimes.

The College is committed to administering its policies and procedures in a manner that is fair and impartial and that treats all persons with dignity and respect. When the College determines that a violation of this Policy has occurred, the College will take prompt and appropriate measures aimed at stopping the violation, preventing its recurrence, and remedying its effects.

##### B. Concordia College Title IX Administrative Staff

###### 1. Title IX Coordinator

The Title IX Coordinator along with the Deputy Title IX Coordinators is responsible for coordinating all aspects of the College's gender equity compliance efforts, including the College's efforts to prevent gender-based discrimination. The Title IX Coordinator is knowledgeable and trained in the College's legal obligations under state and federal laws including Title IX, the Violence Against Women Act, the Minnesota Human Rights Act, and the Minnesota Campus Sexual Harassment and Violence law. Additionally, the Title IX Coordinator and Title IX Deputy Coordinators are knowledgeable and trained in Concordia's policies and procedures.

Pursuant to Title IX of the Educational Amendments of 1972 and 34 C.F.R. Part 106, the Concordia College Title IX Coordinator is the designated representative of the college with primary responsibility for coordinating College Title IX compliance efforts, including the college's efforts to end sexual misconduct, prevent its recurrence, and address its effects. The responsibilities of this position are critical to the advancement, implementation, and monitoring of college-wide efforts to comply with Title IX legislation, regulation, and case law. The Title IX Coordinator is the college agent who is charged with the responsibility to oversee and monitor Title IX related policies and developments; the implementation and oversight of grievance processes and procedures, including notification, investigation, and adjudication of complaints; oversight for provision of educational materials and training for the campus community; conducting and/or overseeing investigations of complaints received pursuant to Title IX; ensuring a fair and neutral process for all parties; and monitoring all other aspects of the college's Title IX compliance.

###### 2. Title IX CORE Team

The Title IX Coordinated Response (CORE) Team is responsible for collectively assessing reports of sexual harassment and determining what actions the College will take in response to each report. The CORE Team

seeks to ensure a prompt, thorough, consistent, fair, and equitable process for the individuals involved while also safeguarding the well-being of the College community as a whole. The CORE Team includes the following individuals:

<b>Concordia College Title IX CORE Team</b>			
Title IX Coordinator	Peggy Torrance	Lorentzsen Hall 150	218-299-4924
Director of Student Conduct	Anne Teitelman	Academy 101	218-299-4326
Director of Public Safety	William MacDonald	Knutson Campus Center	218-299-4358

The responsibilities of the CORE Team include:

- Conducting an initial assessment of reports to determine whether alleged conduct falls within the scope of this Policy;
- Evaluating whether and how the College will proceed under College policy in a manner that provides a prompt, thorough, fair and equitable process for the individuals involved;
- Overseeing intake and interim remedial measures for individuals who report Sexual Harassment;
- Confirming that supportive measures have been offered to both parties in response to each report of sexual harassment;
- Evaluating supportive measures for their effectiveness in restoring a Reporting Party's equal access to the ability to participate in or benefit from the College's educational programs and activities;
- If a Reporting Party requests that the College not investigate and adjudicate a matter, the CORE Team will honor that request unless it determines that further action is legally required;
- Overseeing the comprehensive, accurate, and equitable provision of relevant information on College policies, practices, and resources to reporting parties and, in the event of investigations, responding parties;
- Coordinating the work of the Student Development and Campus Life Office and the Office of Public Safety in responding to each report of Sexual Harassment;
- Determining whether communication with the Concordia community is necessary when a report of sexual assault, stalking, dating violence, or domestic violence has been received;
- Reviewing, and recommending improvements to, Title IX policies and protocols in light of the experiences of Reporting and Responding Parties;
- Overseeing data collection and reporting in compliance with relevant federal and state statutes, regulations, and guidance.

The CORE Team seeks to protect and safeguard the privacy of all individuals involved in the process while performing a careful assessment of and response to reports of Sexual Harassment.

### **3. Title IX Team**

The Title IX Team is led by the Title IX Coordinator and includes the following individuals:

<b>Concordia College Title IX Team</b>			
Peggy Torrance <a href="mailto:torrance@cord.edu">torrance@cord.edu</a>	Title IX Coordinator/Human Resources Director	Lorentzsen Hall 150	218-299-3339
Anne Teitelman	Director of Student Conduct/Deputy Title IX Coordinator	Academy 101	218-299-4326

Warren Schulze <a href="mailto:wschulze@cord.edu">wschulze@cord.edu</a>	Director of CLV Operations/Deputy Title IX Coordinator	The Ginungagap Building 8659 Thorsonveien Rd NE Bemidji, MN 56601	218-299-8502
Rachel Bergeson <a href="mailto:bergeson@cord.edu">bergeson@cord.edu</a>	Director for Athletics/Deputy Title IX Coordinator	104A Memorial Auditorium	218-299-4728
Stephanie Ahlfeldt <a href="mailto:ahfeldt@cord.edu">ahfeldt@cord.edu</a>	Associate Dean of the College/Deputy Title IX Coordinator	Lorentzsen Hall 211	218-299-3107
William MacDonald <a href="mailto:macdonal@cord.edu">macdonal@cord.edu</a>	Director of Public Safety	Knutson Campus Center Information Desk	218-299-4385
Lisa Sethre-Hofstad <a href="mailto:sethre@cord.edu">sethre@cord.edu</a>	Vice President for Student Development & Campus Life	Academy 101	218-299-3455
Roger Olson <a href="mailto:rolson@cord.edu">rolson@cord.edu</a>	Director of Risk Management	Lorentzsen Hall 236	218-299-3682
Johnna Moberg Jmoberg1@cord.edu	Assistant HR Director	Lorentzsen Hall 150	218-299-4926
Leigh Wakefield wakefiel@cord.edu	Professor, Clarinet and Woodwind Methods	Music Building	218-299-4847
Karla Knutson <a href="mailto:knutson@cord.edu">knutson@cord.edu</a>	Professor, English	Academy 304	218-299-3714

The responsibilities of the Title IX Team include:

The Title IX Team works together to foster an environment of respect and empowerment as it relates to sexual harassment, sexual misconduct, and other discrimination. Their role is to oversee the policies, practices, and procedures regarding sexual misconduct, sexual harassment, and gender-based violence. It is their responsibility to ensure that Concordia is in compliance with Title IX as well as other federal and state laws and regulations, including the Jeanne Cleary Act, the Violence Against Women Act (VAWA), and the Campus SaVE Act.

Concordia College charges the Title IX Team with carrying out the following:

- Reviewing data about gender equity and recommending action where inequity exists in areas including Financial Aid, Student Housing, Admissions, Intercollegiate Athletics, and Compensation
- Overseeing policies and procedures to ensure college compliance and to foster an ethos of care and respect in all areas of the college
- Reviewing summary data about incidents and responses evaluating the effectiveness of policies and procedures
- Implementing training, programs, and campaigns to create a culture of safety and support
- Advising both the President of the College and the Title IX coordinator on matters relating to compliance with Title IX of the Education Amendments of 1972

### C. Governmental Authorities

The governmental authorities responsible for overseeing Concordia's compliance with applicable federal and state law, as well as with this Policy, are the following:

U.S. Department of Education Office for Civil Rights  
U.S. Department of Education  
Office for Civil Rights  
Citigroup Center

500 W. Madison Street, Suite 1475  
 Chicago, IL 60661-4544  
 Tel: 312.730.1560  
 TDD: 877.521.2172  
 Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

**Minnesota Department of Human Rights**

The Minnesota Department of Human Rights may be contacted at the following:

Minnesota Department of Human Rights

Freeman Building

625 Robert Street North

Saint Paul, MN 55155

800-657-3704 (phone)

800-627-3529 (fax)

800-627-3529 (TDD)

<http://mn.gov/mdhr/>

[Info.MDHR@state.mn.us](mailto:Info.MDHR@state.mn.us)

## II. GENERAL POLICY GUIDELINES

### Scope of Policy

The College will apply this Policy to address all concerns relating to unwelcome conduct of a sexual nature when alleged to have been committed by or directed toward a current or prospective student or employee, or any other individual participating or seeking to participate in a Concordia College program or activity. It is the intent of the College that this policy will apply to the following:

- A. Allegations of sexual harassment within the scope of Title IX pursuant to 34 C.F.R. Section 106;
- B. Allegations of sexual assault, dating violence, domestic violence and stalking involving members or prospective members of the Concordia community that may otherwise fall outside the scope of Title IX because the alleged incident(s) occurred outside of the United States, or occurred outside of a Concordia program or activity; and
- C. Any other allegations of unwelcome conduct of a sexual nature (NOTE: The ability of the College to apply every aspect of the Grievance Process to allegations that do not fall within #1 and #2 above may be limited by legal requirements).

Concordia College is committed to addressing sexual harassment, and the College strongly encourages any individual who knows of or has been subject to sexual harassment to report the incident to the appropriate College authorities in accordance with the College's reporting procedures, even if the individual is not otherwise obligated to report, and even if the individual is uncertain whether an incident involves sexual harassment that falls within the scope of this policy.

## III. POLICY STATEMENTS and DEFINITIONS

The College expressly prohibits all forms of sexual harassment including sexual assault, sexual violence, sexual exploitation, dating violence, domestic violence, and stalking. Retaliation against a person who in good faith reports suspected sexual harassment or who assists in an investigation is also strictly prohibited. Reports of retaliation are investigated under the College's Code of Student Conduct and the Employee Handbook, for students, staff, and faculty respectively alleged to have retaliated.

### A. Definitions

#### 1. Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- A faculty or staff member conditioning provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- Sexual assault, dating violence, domestic violence, and stalking.

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, sexually motivate physical contact, or other verbal, nonverbal or physical conduct or communication of a sexual nature.

Actions that can constitute sexual harassment include:

- Unwelcome sexual flirtations, advances, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature, obscene language, off-color jokes, verbal commentary about an individual's body, sexual innuendo, and gossip about sexual relations;
- The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, emails, or text messages;
- Visual conduct such as leering or making obscene gestures;
- Recording video or photographs of a sexual nature without consent;
- Cyber harassment, including but not limited to disseminating information, photos, or video of a sexual nature without consent;
- Engaging in conduct of a sexual nature which creates an intimidating, hostile, or offensive academic or work environment (e.g., sexual assault, sexual exploitation, offensive physical contact, obscene messages and gestures); and
- Punishing or threatening to take adverse action against a subordinate or student for refusing to comply with sexual demands.

## **2. Sexual Assault**

Sexual assault is a form of sexual harassment and sexual violence. Sexual assault is any unwelcome sexual contact with another person who does not or cannot give consent. This may or may not include force.

Sexual assault includes, but is not limited to:

- Rape (the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of any person, without the consent of the complainant; a complainant may be a person who is penetrated without consent or a person who is forced to penetrate another person without consent);
- Fondling (the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant);
- Incest (sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law);
- Statutory rape (sexual penetration or other form of sexual contact with a person who is under the statutory age of consent).

## **3. Sexual Violence**

Sexual violence is a severe form of sexual harassment. It includes sexual assault, dating violence and other forms of nonconsensual sexual contact. Depending upon the circumstances, other forms of sexual violence may include domestic violence and stalking (although it is important to note that all forms of domestic

violence and stalking are prohibited under this Policy regardless of whether they also involve nonconsensual sexual contact).

#### **4. Sexual Exploitation**

Sexual Exploitation is a form of sexual harassment that involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

- taking sexual advantage of another person without consent;
- taking advantage of another's sexuality; or
- extending the bounds of consensual sexual contact without the knowledge of the other individual.

Examples of sexual exploitation include, but are not limited to: threatening to disclose an individual's sexual orientation, gender identity, or gender expression; observing another individual's nudity or sexual contact, or allowing another to observe the same, without the knowledge and consent of all parties involved; non-consensual streaming of images, photography, video, or audio recording of sexual contact or nudity, or distribution of such without the knowledge and consent of all parties involved; prostituting another individual; knowingly exposing another individual to a sexually-transmitted infection without the individual's knowledge; misleading another regarding use of contraception; and inducing incapacitation for the purpose of taking sexual advantage of another person.

#### **5. Dating Violence**

Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party. The existence of such a relationship will be determined based on the statement of the individual alleging the dating violence occurred, and based upon a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse, severe and pervasive emotional, psychological, or verbal abuse, or the threat of such abuse.

#### **6. Domestic Violence**

Domestic Violence is violence committed by an individual who is:

- a current or former spouse or intimate partner of the reporting party;
- a person with whom the reporting party shares a child in common;
- cohabitating with or has cohabitated with the reporting party as a spouse or intimate partner;
- considered to be similar to a spouse under Minnesota's domestic or family violence laws; or
- any other person subject to Minnesota's domestic or family violence laws.

Minnesota law defines domestic violence to include violence committed between parents and children, blood relatives, persons who are presently residing together or who have resided together in the past, and persons involved in a significant romantic relationship. The following are examples of conduct that can constitute domestic violence: physical harm, bodily injury or assault; the infliction of fear of imminent physical harm, bodily injury, or assault; terroristic threats; criminal sexual conduct; or interference with an emergency call.

#### **7. Stalking**

Stalking means engaging in two or more acts directed at a specific person that would cause reasonable people to:

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

Stalking can be committed directly by the individual engaging in the stalking behavior or indirectly through third parties. It includes actions such as following, monitoring, observing, surveilling, threatening, or unreasonably communicating to or about a person; or interfering with a person's property.

When the behavior is serious enough to cause reasonable fear for safety or substantial emotional distress, examples of stalking behavior can include:

- Repeated, unwanted, intrusive, or frightening communications by phone, mail, text, email and/or social media;
- Repeatedly leaving or sending unwanted items or gifts;
- Following or lying in wait for a person at places such as the person's residence hall, school activities, work, or recreational places;
- Making direct or indirect threats to harm a person or a person's relatives, friends, or pets;
- Damaging or threatening to damage a person's property;
- Posting information or spreading rumors about a person on the internet, in a public place, or by word of mouth; or
- Unreasonably obtaining personal information about a person for no legitimate purposes.

Stalking behavior can also be a crime. Minnesota law defines stalking as "engag[ing] in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim."

### **8. Sexual Contact**

Sexual contact is defined under Minnesota law as the intentional touching by an individual of another's intimate parts (including an individual's breasts, inner thighs, buttocks, genitals and/or groin area, whether clothed or unclothed); or the coerced touching by an individual of another's intimate parts. Sexual contact also includes the intentional removal or attempted removal of clothing covering an individual's intimate parts.

### **9. Consent**

Consent is words or overt actions by a person clearly and affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in the mutually agreed-upon sexual contact. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent.

All parties to a particular form of sexual contact must provide consent, and such consent must be present throughout the activity. It is the responsibility of the individual who is initiating each sexual contact to obtain consent before proceeding to engage in the sexual contact.

Even when consent is given, it may be retracted at any time. When consent is withdrawn, the sexual contact for which consent was initially provided must stop immediately. Any words or overt actions can communicate withdrawal of consent. As is the case with communicating the existence of consent, verbal communication is usually the clearest way of communicating withdrawal of consent.

A person can only provide consent when that person:

- Acts freely and voluntarily, without coercion or force or otherwise feeling unduly pressured, threatened, intimidated;
- Is informed about the nature of the sexual contact involved;
- Is not incapacitated, whether from alcohol, other drugs, or other causes, such that they cannot understand the fact, nature, or extent of the sexual contact;
- Is conscious;
- Is of legal age to consent (16 years old in Minnesota with some exceptions for younger individuals who are close in age).

These requirements for consent mean that sexual contact with someone who is threatened, coerced, intimidated, uninformed, incapacitated, asleep or otherwise unconscious, or not of legal age, is, by definition, sexual assault.

In addition, consent to a particular sexual contact cannot be inferred from:

- Consent to a different form of sexual contact;
- An existing or prior dating, sexual, romantic or marital relationship;
- Silence that is not otherwise accompanied by overt actions indicating consent;
- An absence of physical resistance or verbal protest; or
- Prior sexual activity with other individuals.

#### **10. Coercion or Force**

Coercion or force includes conduct, intimidation, and expressed or implied threats of physical or emotional harm that would reasonably place an individual in fear of immediate or future harm and that are used in order to persuade or compel someone to engage in sexual contact.

Any sexual contact occurring after a person has engaged in coercion or force will be presumed non-consensual, even if the particular sexual contact that occurs is different from the form of sexual contact in which the individual was attempting to engage, and even if the other individual uses words or actions that would otherwise appear to convey consent.

Examples of coercion or force include causing the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personally sensitive information if the other party does not engage in the sexual contact.

#### **11. Incapacitation**

Incapacitation means an individual's physical and/or mental inability to make informed, rational judgments that is known or reasonably should have been known to the individual initiating sexual contact. An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact.

Regardless of their own level of intoxication, individuals who are initiating sexual contact are always responsible for obtaining consent before proceeding. Intoxication is never an excuse for or a defense to committing sexual assault or any other sexual harassment. Use of drugs or alcohol does not diminish one's

responsibility to obtain consent or reduce one's personal accountability or criminal liability. The issue is whether the individual initiating sexual contact knew, or a reasonable sober person in the position of the individual initiating sexual contact should have known, that the other person was incapacitated.

Alcohol or drug use is a common cause of incapacitation. The mere use of drugs or alcohol, or even intoxication from drugs or alcohol, is not by itself proof of incapacitation. Where alcohol or drug use is involved, incapacitation is a state beyond intoxication, impairment in judgment, or drunkenness. Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- Making decisions about the potential consequences of sexual contact;
- Appraising the nature of one's own conduct; or
- Ability to communicate consent or lack of consent to engage in sexual contact.

There are common signs that should alert a reasonable sober person as to whether an individual might be incapacitated. Typical signs include slurred or incomprehensible speech, clumsiness, difficulty walking, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know who I am?" If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

#### **12. Retaliation**

Retaliation under this policy means intimidation, threats, coercion, or discrimination against any individual because the individual has made a report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

Retaliatory acts may include, but are not limited to: adverse changes in employment status or opportunities; adverse academic action; adverse changes to academic, educational and extra-curricular opportunities; harassment or intimidation; acts or comments intended to embarrass the individual; or seeking out or attempting to discover the parties and witnesses involved in a report for the purpose of influencing their participation or statements, or taking adverse action against them.

#### **IV. REPORTING ALLEGED SEXUAL HARASSMENT**

Concordia provides reporting options through multiple avenues which are broadly accessible to all members of the Concordia community. Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment), in person, by mail, by telephone, or by email, to the Title IX Coordinator, Title IX Deputy Coordinators or another member of the Title IX team.

Reports may be made by completing the College's on-line reporting form, which is automatically delivered to the Title IX Coordinator, or by directly contacting the Title IX Coordinator, a Title IX Deputy Coordinator or another member of the Title IX Team in person, by mail, telephone, or by email. Reports may be made anonymously; however, depending upon the information provided in a report, the College may be limited in its ability to respond. Individuals who report sexual harassment have the right to access their description of the incident as it was reported to the College. To request access to this information, the individual should contact the Title IX Coordinator. Students can contact the Director for Student Conduct/Deputy Title IX Coordinator.

## **A. Options for Individuals Who Have Experienced Sexual Harassment**

### **1. Speaking with a Confidential Resource**

Individuals who have experienced sexual harassment may obtain support and basic information about College, community, and law enforcement options and resources from any of the Confidential Resources identified. In addition to providing emotional support and general information, different confidential resources may provide different kinds of additional assistance. The College's Counseling Center and Student Health Services staff can assist individuals with obtaining medical care. The College of Office Ministry Pastors and Deacon provide pastoral care and spiritual direction.

### **2. Meeting with the Title IX Coordinator or a Title IX Deputy Coordinator to Obtain Information and Assistance**

Concordia recognizes that deciding whether to speak with the Title IX Coordinator/Deputy Coordinator and what course of action to pursue upon reporting are difficult decisions that often unfold over time. A Reporting Party may choose to report to the Title IX Coordinator/Deputy Coordinator, not necessarily for the purpose of initiating the College's Grievance Process, but only to receive more detailed information about College policy and access resources and supportive measures the College can take to sustain the Reporting Party's educational and co-curricular experience. Reporting to the Title IX Coordinator/Deputy Coordinator provides individuals the opportunity to better understand their options and to assess whether they wish to notify law enforcement, initiate the Grievance Process under this Policy, and/or pursue another course of action.

Even if Reporting Parties are not interested in or uncertain about initiating the Grievance Process, they are strongly encouraged to report to the Title IX Coordinator/Deputy Coordinator so that they can better understand and readily access the supportive measures and other options available to them under this Policy. Reporting to the Title IX Coordinator/Deputy Coordinator does not obligate the Reporting Party to initiate the Grievance Process. The College will honor an individual's preferences about whether to proceed with the Grievance Process and will only take additional measures when the College believes further action is legally required. Resources and supportive measures are available regardless of the course of action chosen.

The Grievance Process may be initiated at any time. Some Reporting Parties choose to direct the College to proceed with the Grievance Process at the time they make their initial report of sexual harassment; some are undecided and prefer to take some time to weigh their options; and some decide not to initiate the Grievance Process at the time of their initial report, but later change their minds and direct the College to proceed.

### **3. Reporting to the College to Initiate the Grievance Process**

The Grievance Process is initiated after an individual reports having been subjected to sexual harassment and provides a Formal Complaint directing the College to proceed with the Grievance Process. The parties are provided written confirmation that the Grievance Process has been initiated, along with further information about the allegations. This notification will identify information known to the College at the time regarding the sexual harassment alleged to have occurred, the identities of the parties involved, and the date and location of the alleged incident(s). The written notification will also provide the identity of the investigator, when possible, the identities of the hearing panel members, and other general information about the process.

### **4. Reporting to Law Enforcement**

Individuals who believe they have been subject to sexual violence (including sexual assault and sexual exploitation), dating violence, domestic violence and/or stalking are strongly encouraged to notify the

police departments in either Moorhead or Bemidji. Meetings can normally be arranged on campus, on CLV site or at either of the police departments depending upon the wishes of the Reporting Party. In most instances, reporting to the police does not require filing criminal charges, and the individual reporting to the police maintains control over whether and when criminal charges will be pursued. If the Reporting Party would like an advocate, advisor, parent or Title IX Team member to attend the meeting with the police department, assistance with these arrangements will also be made.

Sexual misconduct may be reported to law enforcement by contacting the Moorhead or Bemidji Police Department:

- Emergency Number: 911
- Moorhead Non-Emergency Number: 218-299-5111
- Bemidji Non-Emergency Number 218-33-9111
- Beltrami County Sheriff Non-Emergency Number 218-333-9111

See Section IV.B.3. for additional information about reporting to law enforcement and the assistance the College can provide for individuals who choose to report.

## **B. Reporting Responsibilities of Employees and Students Who Become Aware of Sexual Harassment**

At Concordia College, some faculty and staff employees are confidential resources as defined below. All other faculty and staff employees, including student employees, have the following responsibilities:

### **1. Required Referrals by Employees and Student Workers**

All employees of Concordia College who are not defined as confidential resources are expected to immediately share all known details about any incident of sexual harassment with the Title IX Coordinator or other member of the Title IX Team. Required referrals may be made in person, by telephone, or electronically. Before obtaining information from a Reporting Party, employees making Required Referrals should inform the Reporting Party of the employee's reporting obligations and inquire whether the Reporting Party would rather speak with a confidential resource.

Employees making a Required Referral may report to any member of the Title IX Team, but they are encouraged to report directly to the Title IX Coordinator/Deputy Coordinator using any of the reporting methods described in Section IV.C. The Required Referral should provide all known details including the date, time and location of the incident; the names of individuals involved and other individuals who may have witnessed the incident; and a brief description of the incident. Although Required Referrals should provide all information learned from a Reporting Party, employees should not attempt to investigate or gather any details about the incident beyond the information that the Reporting Party seeks to share.

Prompt and complete reporting will assist the College in providing timely support and assistance. While employees are obligated to report any information they may have regarding sexual harassment, they should respect the confidentiality of the individuals involved by not further disclosing information to any other individuals without the Reporting Party's authorization.

### **2. Students**

Students are strongly encouraged to report known or suspected incidents of sexual harassment of the Title IX Coordinator/Deputy Coordinator or any other members of the Title IX Team. Students are not required to report information to one of these individuals UNLESS they are also a student employee of the College and become aware of sexual harassment as a result of performing their job for the College are required to report. Student employees who learn about sexual harassment during the course and scope of their

employment with the College are obligated to make Required Referrals by reporting that information to the Title IX Coordinator or a member of the Title IX Team.

### **3. Reporting to Law Enforcement**

Individuals who believe they may have been subject to sexual assault, sexual exploitation, dating violence, domestic violence and/or stalking are strongly encouraged to notify Concordia College's Public Safety Office and/or local law enforcement authorities. Individuals will be assisted by campus authorities in notifying law enforcement authorities, if the individual so chooses. All individuals are strongly encouraged to notify the Moorhead Police Department or the Bemidji Police Department. The filing of charges is optional and individuals may decline to notify such authorities. Individuals can still pursue the college process even if they choose not to make a report to law enforcement.

Regardless of whether a report is filed with the police, Concordia strongly encourages individuals to preserve evidence to the greatest extent possible, as this will best maintain all options for them in the future. An individual should not bathe, shower, brush teeth, dispose of clothing or other physical evidence. If there is suspicion that a drink may have been drugged, inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect possible evidence (e.g., from the drink, through urine or blood sample). Evidence preservation may also include going to Sanford (in Fargo or Bemidji) or Essentia Hospital (in Fargo) as soon as possible to obtain a medical exam and preserve evidence that may be necessary for criminal prosecution.

Petition forms to apply for Harassment Restraining Orders and for Orders for Protection are available in the Public Safety Office and the Moorhead Police Department. These forms must be submitted to the Court Administrator in the Clay County Courthouse, 807 11th St. N., 1st Floor, Moorhead, MN 56560 during business hours. In Bemidji, the Court Administrator is located at the Beltrami County Judicial Center, 600 Minnesota Avenue, Suite 108, Bemidji, MN, 56601. Contact either the Title IX Coordinator Peggy Torrance (218-299-3339 or [titleix@cord.edu](mailto:titleix@cord.edu)) for assistance with obtaining a no contact order.

The Director of Public Safety at the Moorhead campus and the Director of Operations at the Concordia Language Villages are available to assist victims of a crime with contacting the authorities, reporting claims, and pursuing restraining orders. The college will provide complete and prompt assistance to law enforcement authorities, at the direction of law enforcement, in obtaining, securing and maintaining evidence in connection with an incident of sexual assault.

Emergency Number: 911

Concordia Office of Public Safety: On-campus 9-911.

Concordia Office of Public Safety Non-Emergency Number: 219-299-3123

Moorhead Police Department Non-Emergency Number: 218-299-5111

Bemidji Police Department Non-Emergency Number: 218-33-9111

### **4. Confidential Resources**

Confidential resources are individuals who can receive confidential communications, defined as communications which cannot be disclosed to another person without the consent of the individual who provided the information, unless legally authorized or required, such as when the communications involve allegations of the physical or sexual abuse of a child or vulnerable adult, or an imminent threat of serious injury to any person. Among the College's employees, only those individuals designated by the College as confidential resources may receive such confidential communications without being required to report the

information they receive to a member of the Title IX Team. At Concordia, these designated confidential resources include the following:

#### **MOORHEAD**

Center for Holistic Health

Old Main 109A

218-299-3514

[holistichealth@cord.edu](mailto:holistichealth@cord.edu)

Office of Ministry and Spiritual Life

202 Knutson Campus Center

218-299-4161

[dadams6@cord.edu](mailto:dadams6@cord.edu), [kadams4@cord.edu](mailto:kadams4@cord.edu), [leiseth@cord.edu](mailto:leiseth@cord.edu)

Student Health Services

107 Old Main

[knystuen@cord.edu](mailto:knystuen@cord.edu)

218-299-3662

#### **BEMIDJI**

Health and Wellness

8630 Thorsonveien Rd NE, Bemidji, MN

[mnelso38@cord.edu](mailto:mnelso38@cord.edu)

218-526-8600

### **C. Reporting Options and Considerations**

#### **1. Reporting to the Title IX Coordinator/Deputy Coordinator**

As indicated above in Section IV.A.2, the Title IX Coordinator or designee provides information, supportive measures, and other assistance to all parties involved in reports of sexual harassment under this policy.

Following receipt of a report, The Title IX Coordinator or designee will confer with the Reporting Party in order to:

- Assess the Reporting Party's safety and well-being and identify available support and assistance;
- Inform the Reporting Party of the right to seek medical treatment and explain the importance of obtaining and preserving forensic and other evidence;
- Inform the Reporting Party of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- Inform the Reporting Party about resources available at the College and in the community, the right to seek appropriate and available remedial and supportive measures, and how to request those resources and measures;
- Inform the Reporting Party of the right to initiate the College's Grievance Process which could involve the Informal Resolution Process (when available) and/or an adjudication under the Investigation and Hearing Process.
- Explain the College's prohibition against retaliation and that the College will take prompt action in response to any act of alleged retaliation.

#### **2. Reporting to Title IX Team Members**

Individuals may choose any member of the Title IX Team as the most appropriate person to receive their report. The Title IX Coordinator is notified of all reports received by any member of the Title IX Team. An individual who reports to a member of the Title IX Team will be referred to the Title IX Coordinator or designee for further information.

### **3. Reporting to Another Member of the Title IX Team**

Individuals are strongly encouraged to notify Concordia Public Safety Office of instances of sexual harassment (218-299-3123). Public Safety provides 24-hour security services, patrol and response throughout the year. Public Safety is dedicated to the safety and protection of the entire Concordia community. Public Safety is not a division of the Moorhead or Bemidji Police Departments, and information provided to Public Safety will not be reported to the Police unless authorized by the Reporting Party (or such reporting is mandated under Minnesota's child or vulnerable adult abuse and neglect statutes).

### **4. Reporting to Other Faculty and Staff**

All employees of the College, with the exception of the Confidential Resources identified in Section IV.A.1, are responsible for making Required Referrals to a member of the Title IX Team and to provide any information they receive concerning sexual harassment. Individuals should be aware that any information they share with a faculty or staff member concerning alleged sexual harassment should be reported to the Title IX Coordinator or other member of the Title IX Team.

### **5. Reporting Anonymously**

The College accepts anonymous reports of conduct alleged to violate this policy. Anonymous reports may be made on-line at: <https://www.concordiacollege.edu/directories/offices-services/human-resources/title-ix/title-ix-anonymous-reporting-form/> or at: Campus Conduct Hotline, 866-943-5787. The information provided is forwarded to the Title IX Coordinator and utilized for reporting purposes to state and federal authorities. The information is also used by the College to better understand the incidence of sexual violence in our community and to aid Concordia in its education, prevention, and response efforts. If a Reporting Party is identified in an anonymous report, the Title IX Coordinator will contact the Reporting Party to offer information and other services.

The provision of an anonymous report is not used to initiate the Grievance Process under this Policy. The College cannot legally initiate the Grievance Process without first receiving a Formal Complaint. Individuals who provide an anonymous report should not assume that the College can or will take any disciplinary action against an individual identified in their report.

### **6. Reporting to Law Enforcement**

Sexual violence (including sexual assault and sexual exploitation), dating violence, domestic violence and stalking are crimes prohibited under Minnesota's criminal laws. Concordia College has an independent obligation to address reports of sexual harassment regardless of whether such conduct is also reported to the police. Furthermore, legal guidelines preclude the College from reporting incidents of sexual violence to law enforcement without the authorization of the Reporting Party (unless such reporting is mandated under Minnesota's child or vulnerable adult abuse and neglect statutes).

### **Minnesota Crime Victims Bill of Rights**

Under the Minnesota Crime Victims Bill of Rights, when a crime is reported to law enforcement, alleged victims have the right to: request that their identity be kept private in reports available to the public; be notified of crime victim rights and information on the nearest crime victim assistance program or resource; apply for financial assistance for non-property losses related to a crime; be informed of a prosecutor's decision to decline prosecution or dismiss their case (along with information about seeking a protective or

harassment order at no cost to the alleged victim); and protection against employer retaliation for taking time off to attend protection or harassment restraining order proceedings. Alleged victims of domestic abuse have the right to terminate a lease without penalty; alleged victims of sexual assault can undergo a confidential sexual assault examination at no cost, make a confidential request for HIV testing of a convicted felon, and are not required to undergo a polygraph examination in order for an investigation or prosecution to proceed. In cases of domestic abuse and violent crime where an arrest has been made, alleged victims also have the right to be provided notice of the release of the offender, including information on the release conditions and supervising agency. Additional rights include the right to protection from harm, the right to participate in prosecution, and the right to assistance from the Crime Victims Reparations Board and the Commissioner of Public Safety. Complete information about crime victims' rights can be found at: <https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/crime-victims-rights.aspx>

As indicated above, with the exception of confidential resources, all faculty, staff, and students in their role as college employees, are required to report to the college any information they may receive concerning sexual harassment. All other individuals are strongly encouraged to report to the college as well. An individual may choose not to make a complaint or report in his or her own case, even if he or she otherwise has reporting obligations (as a college employee or student worker) with regard to incidents involving others.

Any individual may provide a report to the college by contacting any of the following designated college authorities:

*Title IX Coordinator: Peggy Torrance, 218-299-3339, [titleix@cord.edu](mailto:titleix@cord.edu)*

*Student Development and Campus Life: [titleix@cord.edu](mailto:titleix@cord.edu)*

*Director of Public Safety: William MacDonald, 218-299-4358, [macdonal@cord.edu](mailto:macdonal@cord.edu)*

*Director of CLV Operations: Warren Schulze, 218.586.8503, [wschulze@cord.edu](mailto:wschulze@cord.edu)*

*Director of Athletics: Rachel Bergeson, 218-299-4728, [bergeson@cord.edu](mailto:bergeson@cord.edu)*

*Associate Dean of the College: Stephanie Ahlfeldt, 218-299-3107, [ahlfeldt@cord.edu](mailto:ahlfeldt@cord.edu)*

Reports to the college should include as much information as possible, including the names of the reporting and responding parties, the date, time, place, and circumstances of the incident(s), to enable the college to respond appropriately. Reports can be made by telephone, in person, or online, and can be made anonymously as set forth in the "Anonymous Reports" section of this policy (below). College authorities including, but not limited to, those listed above, will assist individuals with reporting incidents of, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking, to the college.

## **V. ASSESSMENT and ASSISTANCE IN RESPONSE TO REPORTS**

### **A. Protocols for Intake and Evaluation of Reports**

#### **1. Commitment to Privacy**

The College will respect and safeguard the privacy of individuals who report sexual harassment and the privacy of all other individuals involved in the process. Consistent with the College's need to carefully assess allegations of sexual harassment, information will be shared with College officials who have a "need to know" in order to assist in the review of a report and the determination of appropriate responses. For matters that are reviewed under the Grievance Process, information will also be shared as is required by

law and as is deemed necessary for conducting a fair, impartial and thorough investigation and hearing process and/or informal resolution process.

## **2. Waiver of Charges for Drug/Alcohol Violations**

When a Concordia student, employee or guest reports sexual harassment, the College's main priority is to protect the safety and well-being of the members of our community. In order to do so, we need individuals who report sexual harassment and those who participate in investigations into such reports to be honest and candid about the circumstance surrounding the report. We do not want concerns about the College's alcohol and illicit drugs policy to cause individuals to either avoid reporting or to provide incomplete or inaccurate information during an investigation into such a report. Therefore, individuals who report sexual harassment and individuals who participate as a party or witness in an investigation into allegations of sexual harassment will not be disciplined by the College for any violation of its Policy on Alcohol and Illicit Drugs.

## **3. Honoring Requests Not to Initiate the Grievance Process**

The College will honor an individual's preferences about whether to proceed with the Grievance Process, and will only take additional action when the College believes further action is legally required. The Title IX CORE Team will make the assessment of whether further action is necessary.

## **4. Response to Anonymous Reports**

See section C.5.

## **5. Community Reporting and Warning Notifications**

### **Community Reporting & Institutional Response**

All members of the Concordia College community are encouraged to report incidents of suspicious or criminal activity to Public Safety (218-299-3123), the Moorhead Police Department (911), the Bemidji Police Department (218-333-9111 or 911) or the Beltrami County Sheriff (218-333-9111 or 911).

Those members of the Concordia College community identified as Required Reporter, and also those who are Campus Security Authorities as defined by the Crime Awareness and Campus Security Act (Clery Act), including advisors to student organizations, athletic team coaches, members of the Public Safety Department, members of the Office of Student Development and Campus Life, members of the Residence Life Office, and other members of the college community who have significant responsibility for student and campus activities, are required to report crimes to Public Safety for inclusion in the Annual Security Report. It is critical that all reported crimes are included in the college's Annual Security Report (ASR). Compliance does not violate the Family Educational Rights and Privacy Act (FERPA).

### **Timely Warnings and Daily Crime Log**

Under the Clery Act, the college must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The college will make every effort to avoid disclosure of personally identifiable information, to the extent permissible by law, while still providing enough information for community members to make safety decisions in light of the danger. These alerts are sent by electronic mail directly to students, faculty, and staff of the college. In addition, a daily crime log listing all crimes reported to Public Safety is maintained in the Public Safety Office and is available for public review during normal business hours.

## **B. Options for Immediate Assistance**

### **1. Supportive measures**

At any time after a report of sexual harassment has been received, the College will arrange for reasonable and appropriate supportive measures aimed at protecting the well-being and safety of the parties or witnesses involved. Supportive measures are actions taken to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party. They include measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures foster a more comfortable and safe educational and living environment throughout the process of reporting and, if applicable, the Grievance Process. Supportive measures may be requested by a party or witness, or they may be initiated by the College. Supportive measures are available regardless of whether a report proceeds to the Grievance Process.

Appropriate supportive measures will vary depending upon the particular circumstances and based on a party's confidentiality preferences. The range of potential supportive measures that Concordia may take include:

- Access to counseling, medical, and other confidential services and assistance in setting up initial appointments on and off campus.
- A College-imposed mutual "no-contact directive" prohibiting contact between individuals.
- Assistance in petitioning a court for an order for protection / harassment restraining order.
- Making information available about and providing assistance with respect to orders for protection and harassment restraining orders, including enforcement of such orders.
- Providing campus security escorts to assure safe movement between classes and activities.
- Rescheduling of exams or assignments.
- Providing alternative course completion options.
- Providing other academic support services, such as tutoring.
- Assisting in setting up potential accommodations (academic or otherwise) through the Disability and Access Office or other relevant departments.
- Changing a student's class schedule.
- Changing an employee's work schedule or job assignment.
- Changing campus housing arrangements and assistance with housing relocation.
- Limiting access to certain College residence halls, facilities or activities pending resolution of the matter.
- Voluntary leave of absence.
- College-imposed leave, suspension or separation for students accused of committing sexual harassment where the CORE Team has overseen an individualized safety and risk analysis and determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. In cases where such action is taken, the individual subject to the leave, suspension or separation will be provided notice and an opportunity to challenge the decision immediately following the removal.
- Immediate leave of absence for a non-student employee accused of sexual harassment when deemed appropriate under the circumstances.
- In cases where the individual is or becomes enrolled at a different educational institution either because of a transfer, on-going studies after graduation from Concordia, or temporary enrollment at a different institution, the College will provide information about resources available at the student's current institution.
- Any other measure deemed appropriate for fostering a more comfortable and safe educational and living environment.

Supportive measures are offered by the College based upon the information gathered during the report or

made available to the College thereafter. They are not intended to be punitive. Such measures will vary based on the particular facts and circumstances, including but not limited to the specific need expressed by the party, the age of the student[s] involved, the severity or pervasiveness of the allegations, any continuing effects on the other party, whether the Reporting Party and the Responding Party share the same residence hall or job location, and whether other measures have been taken to protect the Reporting Party and Responding Party.

The Title IX Coordinator or designee will maintain on-going contact with the parties involved in a report of sexual harassment. The Title IX Coordinator retains the discretion to initiate and/or modify any supportive measures based on all available information. A party may challenge supportive measures, or failure to impose supportive measures or take other actions, by contacting the Title IX Coordinator to address any concerns. The Title IX CORE Team will have ultimate responsibility over the determination of what measures will be put in place.

## **2. Measures for Avoiding Contact with Other Involved Parties**

### **Concordia no-contact directive**

A no-contact directive is a College-issued order that prohibits one or both parties from communication or contact with another. To request a no-contact directive from the College, individuals should contact the Title IX Coordinator.

The Title IX Coordinator can provide Reporting Parties and Responding Parties information about available options for orders for protection, restraining orders, and no-contact directives.

### **Law Enforcement Order for Protection/Harassment Restraining Order**

Harassment restraining orders and orders for protection are legal orders issued by a state court which forbid someone from harassing and/or making contact with another individual. A harassment restraining order is a civil court order issued against an alleged harasser, regardless of the relationship between the alleged harasser and the alleged victim, which orders the harasser to stop harassing the victim and/or to have no contact with the victim. An order for protection is a civil court order that protects one family or household member from domestic abuse by another family or household member. The College does not issue harassment restraining orders or orders for protection, but one can be obtained through an application to the District Court. Paperwork to petition the court for an order for protection or harassment restraining order is available from the Public Safety Office or the Moorhead or Bemidji Police Departments. These forms may be submitted to the Court Administrator in the Clay County or Beltrami Courthouse, during business hours.

An order for protection and/or harassment restraining order can be enforced by contacting local law enforcement. Concordia is committed to ensuring that any such order issued by a court is fully upheld on the College's campus and at any Concordia-sponsored event.

## **C. Medical Forensic Examinations**

For their health and safety, to preserve their options and for other reasons, victims of sexual assault are strongly encouraged to immediately obtain medical attention and a medical forensic examination. A medical forensic examination is an exam performed by a specially-trained forensic nurse, called a Sexual Assault Nurse Examiner (or "SANE"). SANEs are contracted to work with physicians in the Emergency Department at Sanford or Essentia Hospitals. Medical forensic examinations are available to anyone who is a victim of sexual assault regardless of gender or gender identity. Medical forensic examinations are conducted up to 168 hours (seven days) after the occurrence of a sexual assault; however, there may be circumstances that warrant an examination even after that period of time has expired.

The purpose of a medical forensic exam is to (1) assess the patient for injuries that need treatment, (2) provide medical care (including medications to prevent infections and pregnancy), and (3) document and collect evidence of sexual contact or physical trauma (including injuries on the body and genitals), trace evidence, and identifiable DNA of the perpetrator of a sexual assault. When there is suspicion or concern that a victim may have been incapacitated by drugs or alcohol during a sexual assault, the medical forensic exam may include the collection of urine and/or blood samples for toxicology testing.

Evidence and other documentation recovered from a medical forensic exam may be used to support a report under this Policy, subject to the permission of the Reporting Party, or a police report/criminal complaint; however, having a medical forensic exam performed does not mean that the Reporting Party must report the incident to either the Concordia Title IX Coordinator or other member of the Title IX Team, or to any law enforcement agency. That decision is entirely up to the Reporting Party. Even if the Reporting Party is not presently considering initiating an investigation with either the College or the police, obtaining an examination may ensure that important evidence is not lost and may therefore be useful in the future if the Reporting Party later decides to initiate the College's Grievance Process or file a police report. Evidence recovered from a medical forensic exam is not tested unless a Reporting Party reports to law enforcement.

Forensic evidence and other documentation collected at the Hospital may be released to the College or Moorhead or Bemidji Police only with the Reporting Party's written consent or if an authorized third party provides consent on the Reporting Party's behalf. This forensic evidence may be used to support any subsequent criminal and/or College disciplinary action.

## **VI. THE GRIEVANCE PROCESS**

### **A. Summary of the Grievance Process**

In furtherance of Concordia's commitment to providing a safe and non-discriminatory environment for all students, staff, faculty and other members of our campus community, this Grievance Process is available when a Reporting Party provides a Formal Complaint requesting the College to initiate an investigation into allegations of sexual harassment. The Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the Formal Complaint is filed. Upon receipt of a Formal Complaint from a Reporting Party, the College will issue a Notice of Allegations to the parties involved. After issuing a Notice of Allegations and providing the parties a reasonable opportunity to prepare in advance of any meeting to discuss the allegations, the College will commence an investigation into the allegations raised in the Formal Complaint. The goal of the Investigation and Hearing is to determine whether it is more likely than not that the Responding Party engaged in sexual harassment. The Responding Party is presumed not responsible for violating this Policy and the burden of proof and the burden of gathering evidence sufficient to reach a determination is on the College.

The following is a brief summary of each phase of the Grievance Process. More detailed information regarding each phase is provided in the remainder of this section.

#### **Informal Process**

The Grievance Process includes the opportunity for the parties to participate in mediation to attempt to reach a mutually agreeable resolution to the allegations raised in the Formal Complaint. This part of the Grievance Process is called the Informal Resolution Process. The Informal Resolution Process cannot be initiated without the filing of a Formal Complaint. The Informal Resolution Process is used when the Reporting Party and Responding Party each agree in writing to attempt to mediate a resolution, and involves the voluntary crafting of an agreement between the parties, which the College must also approve, designed to resolve the Formal Complaint. Pursuing the Informal

Resolution Process does not require the parties to ever be in the same room with each other or to speak to one another directly. While the Informal Resolution Process normally occurs prior to commencing an investigation, the College reserves the right to allow the Informal Resolution Process to occur at any point prior to a final determination of the Formal Complaint. The Informal Resolution Process is completely voluntary to all parties involved, and once commenced, any party or the College can decide to withdraw from participation at which point the Investigation and Hearing Process will resume.

#### Investigation Phase

If any party opts not to participate in the Informal Resolution process, or the Informal Resolution Process fails to result in a mutually agreeable resolution to the Formal Complaint, the College will proceed with the Investigation and Hearing Process. As its name indicates, there are two phases to this process. The first stage is an investigation aimed at gathering all relevant evidence and summarizing it in an Investigation Report prepared by a trained investigator retained by the College. During this phase the parties have the same opportunity to participate in the investigation by meeting with the investigator, providing whatever evidence the party believes is relevant, identifying witnesses that should also be interviewed, and suggesting questions that should be asked of other witnesses and parties. Once the evidence has been gathered by the investigator, the parties have the same opportunity to access, review and comment on the evidence that will be summarized by the investigator in the Investigation Report.

#### Hearing Phase

After the investigator issues the Investigation Report, the investigation phase is complete and the process moves into the hearing phase. No sooner than 10 days after the issuance of the Investigation Report, a Hearing Panel comprised of trained personnel will convene a hearing at which time the parties will be provided an equal opportunity to address the evidence with the Hearing Panel, including the opportunity to, through their advisor, ask questions of any other party or witness. If a party does not have an advisor, the College will provide a representative to ask the party's questions on the party's behalf.

After providing the parties an opportunity to participate in the hearing, the Hearing Panel will then meet to consider all of the evidence presented during the investigation and hearing process. Based on the evidence presented during the investigation and hearing, the Hearing Panel will issue a Notice of Decision indicating whether it is more likely than not that the Responding Party violated this policy. If such a determination is made, the Hearing Panel will also determine remedies designed to restore or preserve the Reporting Party's equal access to the College's education program or activity, and any sanctions the Hearing Panel deems appropriate.

#### Appeal Phase

Any party who believes the Hearing Panel created an error in its decision may file a timely appeal of the decision to an Appeal Adjudicator. The Appeal Adjudicator will be an individual who played no prior role in the matter and who is free of any bias or conflict of interest. All parties will be provided notice of an appeal and will have an opportunity to submit a position statement relating to the appeal. The Appeal Adjudicator will issue a determination of the appeal which may affirm the decision of the Hearing Panel, overturn the decision, and/or direct the Hearing Panel to conduct further proceedings to resolve a concern raised in an appeal. If no party files an appeal of the Hearing Panel's decision, or if the Appeal Adjudicator affirms the Hearing Panel's decision, the College's process will end and any sanctions imposed by the Hearing Panel will immediately go into effect. Once the time to appeal has expired or an appeal is decided, no party will have an ability to seek further recourse from the College relating to the allegations raised in the Formal Complaint.

### **B. General Grievance Process Provisions**

#### **1. Role of the Title IX Coordinator**

The Title IX Coordinator is a resource for all parties participating in the Grievance Process. The Title IX

Coordinator is available to explain the Informal Resolution Process and the Investigation and Hearing Process. Any questions or concerns that arise during the Grievance Process should be directed to the Title IX Coordinator. When matters are brought to the Title IX Coordinator that fall outside the scope of the Policy Prohibiting Sexual Harassment, the Title IX Coordinator may refer the matter to other institutional representatives.

## **2. Commitment to Fair Treatment of All Parties**

The College seeks to ensure that all Reporting Parties and Responding Parties involved in the Grievance Process are treated with dignity and respect. The College strives to provide a process that is prompt, fair and impartial. Reporting Parties involved in this process should never be treated in a manner that suggests that they were at fault for, or that they should have done something differently to avoid, the reported sexual harassment. Responding Parties are presumed not responsible for the alleged sexual harassment until a determination regarding responsibility is made at the conclusion of the Grievance Process. If parties have any concerns about the manner in which they are being treated throughout the Grievance Process, they should immediately report such concerns to the Title IX Coordinator.

Reporting Parties and Responding Parties who participate in the Grievance Process can expect the following:

- Prompt and equitable resolution of allegations of sexual harassment in adherence to the process and timeframes provided in the Grievance Process;
- Respect of their privacy in accordance with the Policy and any legal requirements;
- Freedom from retaliation for making a good faith report of sexual harassment or for participating in the Grievance Process;
- The opportunity to articulate concerns or issues about proceedings under the Grievance Process with the Title IX Coordinator;
- The opportunity to select an advisor of choice, who may be but is not required to be an attorney, including the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by the Grievance Processes;
- The opportunity to challenge the investigator, Informal Resolution facilitator, any member of the Hearing Panel, or an Appeal Adjudicator for bias or conflict of interest;
- The opportunity to provide relevant evidence and identify witnesses during an investigation;
- The opportunity to have timely and equal access to all relevant evidence gathered during the investigation and that may be used during any proceedings under the Grievance Process;
- The right to a hearing at which the parties may present evidence, including testimony, and may through their advisor ask questions of witnesses and other parties;
- Reasonable time to prepare in advance of any interview or proceeding under the Grievance Processes;
- Written notice of any extension of time frames for good cause;
- Prompt and simultaneous written notice of the all decisions relating to the Formal Complaint including the Hearing Panel's determination and the Appeal Adjudicator's decision of any appeal; and
- The right to timely appeal the decision of the Hearing Panel.

## **3. Avoiding Conflicts of Interest**

If a Reporting Party or Responding Party has any concern that any individual acting for the College under the Grievance Process has a conflict of interest, such concern should be reported to the Title IX Coordinator no later than either two (2) business days after receiving the notice of the identity of the individual(s) assigned to the matter; or, in the case of a conflict of interest that arises after an individual is assigned to the matter, within two (2) business days after a conflict of interest arises. The Title IX CORE Team will

review the concerns and take appropriate steps to ensure that no conflicts of interest exist on the part of anyone involved in mediating, investigating, or adjudicating a Formal Complaint under the Grievance Process.

If the Title IX Coordinator has a conflict of interest with respect to the Grievance Process, the College's President or the President's designee shall appoint an alternate person to oversee the administration of this Policy with respect to the specific report at issue. If the President is a party to the report or has a conflict of interest with respect to a report, the Chair of the Board of Regents for the College shall ensure that the College puts in place appropriate safeguards under the circumstances to ensure that the College promptly and equitably responds to the Formal Complaint, including, but not limited to, appointment of alternate individuals to oversee the Grievance Process.

#### **4. Response to Non-participation and Silence**

A party to the Grievance Process may at any time decline to provide information or otherwise participate in the Grievance Process. If a party opts not to participate in the Grievance Process, the College will proceed with the process and make a determination based upon the information available. Silence in response to an allegation will not be viewed as an admission of the allegation, but may leave allegations unrefuted.

#### **5. Reservation of Flexibility**

The procedures set forth in the Grievance Process reflect the College's desire to respond to reports in good faith and in a manner that promotes fairness, impartiality and prompt resolution for all parties. The College recognizes that each case is unique and that circumstances may arise which require the College to reserve flexibility in responding to the particular circumstances. Where legally permissible, and where it is not possible or practical to follow the procedures provided in this Grievance Process, or for some other reason the College deems it preferable to utilize a different process, the College reserves the right to modify the procedure or to take other administrative action as it deems appropriate under the circumstances. Unwanted conduct of a sexual nature that does not rise to a level of being "severe, pervasive, and objectively offensive" may be referred for review under the College's [Code of Conduct](#).

When the College receives a report involving allegations of sexual harassment by a third party (an individual who is not a student, faculty, or staff member) that is outside the scope of this Grievance Process, the Title IX CORE Team may exercise discretion to determine an adjudication process that is deemed more appropriate based on the facts and circumstances of the matter. The Title IX Coordinator will document any report received, the process used, and the outcome. If it is determined that it is more likely than not that a third party violated this Policy, appropriate sanction(s) may include but are not limited to: conditions upon presence on campus or at College events, no-trespass and no-contact directives, or other steps deemed necessary to protect the Reporting Party and the campus community. Any party with concerns about the process or outcome should consult with the Title IX Coordinator.

#### **6. Right to an Advisor of Choice**

Both the Reporting Party and the Responding Party have the right to be assisted by an advisor of their choice as long as the advisor is not a potential witness in the case, does not have some other conflict of interest, and observes the following protocols:

- The purpose of the advisor is to support a Reporting Party or Responding Party in the Grievance Process.
- During the investigation phase of the Grievance Process, advisors may confer with their advisee, but they may not speak on behalf of their advisee, advocate for their advisee, or otherwise actively participate in the process.

- During the hearing phase of the Grievance Process, advisors will ask questions to the other parties and witnesses providing testimony. If a party does not have an advisor present at the live hearing, the College will provide a representative to that party to ask questions on the party's behalf at no cost to the party.
- The advisor may accompany their advisee to all meetings relating to the Grievance Process, including the Informal Resolution Process is applicable.
- While advisors may assist their advisee in drafting written communications to the College, they may not directly or indirectly communicate with the Title IX Coordinator, the investigator, the Hearing Panel members, witnesses (other than their own advisee), or the Appeal Adjudicator.
- Advisors may not interrupt or otherwise unduly delay the Grievance Process. The College will strive to accommodate advisors' schedules; however, if an advisor is not reasonably available to participate in the Grievance Process, the College reserves the right to move forward with its process in order to ensure its prompt completion.
- With the permission of their advisee, advisors will be provided access to the same investigation materials and evidence that is available to their advisee. This information frequently includes student records and other confidential and highly sensitive information. Advisors' access to such information is conditioned upon their agreement to maintain the confidentiality of these records except when disclosure is legally authorized. Advisors may only discuss information disclosed through the investigation process with their advisee. For example, if a party's advisor is an attorney, the attorney may not share any information obtained during the investigation process with other attorneys or staff associated with the attorney.
- Violations of confidentiality or other forms of interference with the resolution procedure by the advisor may result in disqualification of an advisor.
- The College reserves the right to disclose information about the identity of one party's advisor to the other party in a Grievance Process.

### **7. Prohibition on Retaliation**

Concordia College strictly prohibits retaliation against individuals who report sexual harassment or against individuals who assist in or participate in the Grievance Process. Encouraging or assisting others to engage in retaliation is also prohibited. The College prohibits any form of intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Complaints alleging retaliation may be reported to the Title IX Coordinator and will be addressed under applicable disciplinary procedures.

Retaliatory acts may include, but are not limited to: adverse changes in employment status or opportunities; adverse academic action; adverse changes to academic, educational and extra-curricular opportunities; harassment or intimidation; acts or comments intended to embarrass the individual; or seeking out or attempting to discover the parties and witnesses involved in a report for the purpose of influencing their participation or statements, or taking adverse action against them.

Retaliation may be found even when an underlying report of Prohibited Conduct made in good faith was not substantiated. Retaliation may be committed by any of the parties or witnesses in the Grievance Process, their friends or representatives, or any other individuals.

Retaliatory conduct by community members and third parties is prohibited regardless of whether it occurs on or off campus, in person, or through social media, e-mail, or other forms of communication.

### **8. Responsibility to Act in Good Faith and Provide Truthful Information**

Parties and witnesses who participate in the Grievance Process are expected to act in good faith and provide truthful information in connection with the investigation and adjudication of the Formal Complaint. While individuals may opt to refuse to participate in the Grievance Process, when they proceed to participate it is expected that they will act in good faith and provide truthful and accurate information during the course of the Grievance Process.

### **9. Timelines**

The College will strive to promptly complete the Grievance Process. A general timeframe for each step in the process is provided below. These timeframes may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, party or a party's advisor, to accommodate a party with a disability, to account for College breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. In cases where extensions may be necessary, the Title IX Coordinator will notify the parties. Extensions will be no longer than necessary. The Reporting Party and Responding Party will receive written notice of any extensions that will include the reasons for the delay and the anticipated length of the delay.

### **C. Notice of Allegations**

After the filing of Formal Complaint, as described above, the Title IX Coordinator will notify the Reporting Party and the Responding Party, in writing, of the commencement of the Grievance Process. After receiving the Notice of Allegations, the parties will be provided sufficient time to prepare before meeting with the Investigator to discuss the allegations. The Notice of Allegations will include the following:

- Sufficient details of the allegations known to the College at the time of issuance including the identity of the parties involved in the incident, if known; and the date and location of the incident, if known;
- The conduct allegedly constituting sexual harassment;
- The identity of the Investigator and Hearing Panel members;
- Information on how the parties may challenge participation by the Investigator or the Hearing Panel on the basis of bias or a conflict of interest;
- A statement that the Responding Party is presumed not responsible for the reported conduct and that a determination regarding responsibility is made based upon a preponderance of the evidence at the conclusion of the Grievance Process;
- Notice that knowingly making false statements or knowingly submitting false information during a Grievance Process is a violation of the [Code of Conduct](#) and will be addressed under that disciplinary process;
- An explanation of the College's policy prohibiting retaliation against any party, witness or other individual who reports sexual harassment or who participates in the Grievance Process;
- Instructions to the parties to preserve any potentially relevant evidence in any format;
- Assurance that a party will not be required or permitted to use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
- Information regarding the parties' right to have an advisor of their choice (who may be, but is not required to be, an attorney) who may inspect and review evidence during the Grievance Process, and who may ask questions of parties and witnesses during the hearing that occurs after the investigation; and
- A link to a copy of the Policy and this Grievance Process.

If after the investigation begins the College determines there are additional allegations that need to be investigated but were not included in the original Notice of Allegation, the College will provide an Amended Notice of Allegations which will provide the additional details about the allegations that are known to the College.

#### **D. The Informal Resolution Process**

After the filing of a Formal Complaint as described above and in a manner consistent with the requirements of this section, at any time prior to reaching a determination of responsibility, Concordia may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process requires the voluntary, written consent to participate in the informal resolution process. The informal resolution process is not available to resolve allegations when an employee sexually harassed a student. The College will complete the information resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

The College will provide the parties with a written notice disclosing the allegations and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The parties may seek to use an Informal Resolution Process to develop a College-approved agreement between the Reporting Party and the Responding Party designed to address the concerns raised in the Formal Complaint. The Informal Resolution Process will proceed if all parties agree to participate. The Informal Resolution Process is overseen by a trained facilitator appointed by the Title IX Coordinator. Normally the process commences prior to the investigation phase and is completed within thirty (30) calendar days. The Title IX Coordinator will maintain records for all Informal Resolution cases, including a copy of any College-approved agreements between the parties. The College maintains discretion to determine whether a matter is appropriate for Informal Resolution. Informal Resolution will not be available for Formal Complaints involving a student Reporting Party and an employee Responding Party.

Participation in Informal Resolution is completely voluntary. The College will not require a Reporting Party or Responding Party to engage in Informal Resolution and will allow a Reporting Party or Responding Party to withdraw from Informal Resolution at any time up until an agreement is reached and signed. During the Informal Resolution, the College will not compel the Reporting Party or the Responding Party to interact directly with each other. The College may decline a request for Informal Resolution in any particular case and may terminate an ongoing Informal Resolution Process at any time.

Each party has the right to choose and consult with an advisor during an Informal Resolution Process. The advisor may be any person, including an attorney, who is not otherwise a party or witness to the reported incident. See Section VI.A.5. for additional information on the protocols to be observed by an advisor.

Pursuing Informal Resolution is one step of the College's Grievance Process. If a matter is not resolved during the Informal Resolution, the matter will proceed to the Investigation and Hearing Process unless the Reporting Party withdraws the Formal Complaint or the College dismisses the Formal Complaint.

#### **E. The Investigation Phase**

##### **1. Initiating the Investigation**

The Investigation Phase is initiated when a Reporting Party reports sexual harassment and submits a written Formal Complaint requesting that the College proceed with the Grievance Process. Upon receipt of a Formal Complaint the College will issue a Notice of Allegations to both parties. The Notice of Allegations

will provide sufficient details of the allegations of sexual harassment that are known to the College, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The Investigation may be temporarily suspended if the parties agree to attempt to resolve the matter through the Informal Resolution Process. If such efforts are unsuccessful because either party withdraws from the Informal Resolution Process or the College declares an impasse, the investigation will proceed.

## **2. Assigning an Investigator**

Whenever the Grievance Process is commenced, an investigator is assigned to conduct a prompt, thorough, fair, and impartial investigation. In most instances the College will retain an external investigator to conduct the investigation. The Investigator has broad discretion to determine the investigation format. The Investigator is responsible for maintaining an orderly, fair, and respectful investigation process and has broad authority to respond to disruptive or harassing behaviors, including adjourning an investigative meeting or excluding the offending person. All investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of all parties and the College community while promoting accountability. Investigators will also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## **3. Dismissal of the Formal Complaint or Allegations**

The College retains discretion to dismiss a Formal Complaint, or any allegations contained in a Formal Complaint, if it becomes evident at any time during the Grievance Process that: (1) the allegations, even if proved, would not constitute a violation of this Policy; or (2) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations. A dismissal on either of these grounds may be made at the College's own initiative or in response to a request by a Responding Party. Such requests should be made in writing to the Title IX Coordinator and should provide in a succinct statement of the basis for the request for dismissal. The College will not dismiss a matter without first notifying the Reporting Party of the grounds upon which it is considering dismissal and providing the Reporting Party a reasonable opportunity to respond.

The College may also dismiss a Formal Complaint or any allegations contained therein, if at any time a Reporting Party notifies the Title IX Coordinator in writing that the Reporting Party would like to withdraw the Formal Complaint or any allegations therein.

Upon a dismissal of the Formal Complaint or any allegations, the College will promptly and simultaneously provide the parties a written Notice of Dismissal which will contain the reason(s) for the dismissal decision.

A decision by the College to dismiss a Formal Complaint or any allegations contained therein, is appealable pursuant to Section VI.F.1 below. The Notice of Dismissal will identify the Appeal Adjudicator and instructions on how a party may appeal the decision.

## **5. Consolidating Multiple Complaints**

In its discretion, the College may consolidate Formal Complaints of sexual harassment allegations against more than one Responding Party, or by more than one Reporting Party against one or more Responding Party, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

## **6. Investigation of other Code of Conduct Violations**

If a report of sexual harassment also implicates other allegations of violations of the College's [Code of](#)

[Conduct](#) or other College policy, the Title IX CORE Team will evaluate the allegations to determine whether the investigation of the sexual harassment and the other alleged misconduct may be appropriately investigated together under this Grievance Process. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of other [Code of Conduct](#) policies will be evaluated under the applicable policy, but the investigation and hearing will be conducted in accordance with these Procedures.

#### **7. Title IX Coordinator Communications During Investigation**

The Title IX Coordinator or designee remains available to the parties throughout the Grievance Process to answer questions or address concerns. The Title IX Coordinator or designee can assist parties with changes to existing supportive measures or with addressing concerns about the Grievance Process. The Title IX Coordinator or designee will also notify the parties of the date, time, location, participants, and purpose of all investigative interviews at which a party will be requested to attend with notice to provide the party sufficient time to prepare to participate before attending the interview. The parties will also receive notice of all meetings or proceedings relating to the Grievance Process at which the other party or parties will be in attendance, including any meetings with the investigator or other College officials. During the Grievance Process the parties can expect to receive updates from the Title IX Coordinator on at least a weekly basis.

#### **8. Role of Advisor During Investigation Phase**

The parties have the right to be assisted by an advisor of their choice as long as the advisor is not a potential witness in the case, does not have some other conflict of interest, and the advisor observes the College's protocols for advisors participating in the Grievance Process. During the investigation phase, an advisor's role is to provide advice and support to their advisee. An advisor may confer with their advisee, but they may not speak on behalf of their advisee, advocate for their advisee, or otherwise actively participate in the process. During an investigation interview, an advisor should not interrupt or otherwise interfere with the investigator's interview.

#### **9. Meeting with the Investigator**

The Investigator will seek to meet with all parties at least once during the investigation to ask questions about the allegations and to provide the parties an opportunity to address the allegations raised in the Formal Complaint. Parties will be given adequate time to prepare to participate before an interview will be conducted. In addition to answering the Investigator's questions, the parties should be prepared to provide the Investigator any evidence relevant to the investigation, the names of witnesses whom the party believes should be interviewed, and any questions the party believes should be asked of another party or witness.

#### **10. Close of Evidence Notice**

The College will strive to complete the investigation phase of the Grievance Process within twenty (20) business days. Prior to the Investigator drafting an Investigation Report, the Title IX Coordinator will inform the parties of the pending close of the investigation phase so that the parties will have an opportunity to submit any additional evidence and/or suggest additional witnesses to be interviewed. The "Close of Evidence" (i.e. the deadline for submitting further evidence) will occur on a date identified by the investigator, and the parties will not be permitted to introduce additional evidence after that date absent circumstances the College deems necessary in meeting its burden of proof and burden of gathering evidence sufficient to reach a determination.

#### **11. Opportunity to Review and Comment on Evidence Gathered**

At least 10 calendar days prior to the Close of Evidence, the parties will be given equal opportunity to inspect, review and comment on all of the evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including inculpatory or exculpatory evidence

whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the Investigative Report, the College will send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy (at the College's discretion). Before the end of this 10-day period, the parties may submit a written response to the evidence, which the Investigator will consider prior to completion of the Investigative Report. If a party raises an issue that results in the Investigator deciding to conduct further investigation, the parties will be provided an additional 10-day period of time to review and comment on any additional evidence gathered before the Close of Evidence. The evidence made available to the parties for review and inspection will be made available to the parties during the hearing, including for purposes of asking questions of witnesses.

### **12. Investigation Report**

Following the close of evidence, the investigator will prepare and send to the parties and their advisors, in electronic or hard copy format, an Investigation Report which fairly summarizes the relevant evidence gathered during the investigation and which summarizes the contested and uncontested facts relevant to the allegations at issue in the Formal Complaint. The Investigation Report will not include any findings relating to the credibility of any party or witnesses, and will not include any conclusion by the Investigator as to whether the Investigator believes a preponderance of the evidence supports a finding of responsibility. The Reporting Party and the Responding Party will have an opportunity to review the Investigation Report and submit a response to the Hearing Panel for their review.

## **F. The Hearing**

The hearing is an opportunity for the parties to address the Hearing Panel in person and to question the other party and/or witnesses. It also provides the Hearing Panel an opportunity to obtain information following the investigation that is necessary to make a determination of whether a Policy violation occurred.

### **1. Hearing Panel**

The hearing will be conducted by a three-person Hearing Panel. The Hearing Panel will receive annual training regarding the College's definition of sexual harassment, the scope of the College's education programs and activities, how to conduct a hearing, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The Hearing Panel will also receive training on the technology to be used at the live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the Reporting Party's sexual predisposition or prior sexual behavior are not relevant.

The Hearing Panel must be impartial and free from bias or conflict of interest. If any Hearing Panel member has concerns that they cannot conduct a fair or unbiased review, the Hearing Panel member may report those concerns in advance of the prehearing conference to the Title IX Coordinator and a different Hearing Panel member will be assigned. Similarly, a Reporting Party or a Responding Party who has concerns that an assigned Hearing Panel member cannot conduct a fair and unbiased hearing may report those concerns to the Title IX Coordinator who will assess the circumstances and whether a different Hearing Panel member should be assigned. The Hearing Panel has broad discretion to determine the hearing format. The Hearing Panel 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 Hearing Panel will also have discretion to call for breaks or recesses as deemed necessary during the hearing.

The parties may make requests to the Title IX Coordinator related to the format or the nature of their participation in the hearing. The Title IX Coordinator will work with the Hearing Panel to accommodate reasonable requests.

## **2. Scheduling**

The Title IX Coordinator will forward a copy of the Investigation Report to the Hearing Panel and will schedule a hearing date, time, and location and notify the parties of the same. The date of the hearing will be at least ten (10) calendar days after the parties' receipt of the Investigation Report and, except in extraordinary circumstances, no later than seventeen (17) calendar days from the issuance of the Investigation Report.

## **3. Standard of Evidence and Burden of Proof**

In all cases before the Hearing Panel, the standard of proof is a preponderance of evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence and reasonable inferences from the evidence, that the Responding Party violated this Policy. Neither party bears the burden of proof. It is the College's burden of proof under the Grievance Process and the College's burden of gathering evidence sufficient to reach a determination.

## **4. Pre-hearing Meeting**

Prior to the hearing, the Title IX Coordinator will convene a separate pre-hearing meeting with each of the parties and their advisors to review procedures to be followed at the hearing; to identify the names of witnesses that will be asked to appear; and to answer any other questions or share information prior to the hearing. At this pre-hearing meeting, each party must identify the witnesses they will want to appear at the hearing for questioning in order to allow the Title IX Coordinator to successfully schedule and make arrangements for the hearing. The Title IX Coordinator will also discuss the time allotted for the hearing and any time limitations. If either party will not be attending the hearing, the Title IX Coordinator will determine whether and how that absence affects the ability of the College to move forward with the hearing, as well as the hearing schedule. The parties are expected to identify witnesses they wish to be available during the hearing by the pre-hearing meeting. The Hearing Panel may, in its discretion, exclude from the hearing witnesses who were not identified by a party.

## **5. Recording Hearing**

The hearing is live and closed to the public. The parties are allowed to have their advisor present throughout the hearing process. The College will record the hearing and any other recording by the parties, their advisors or anyone else is prohibited. A copy of the recording will be made available to parties for their inspection and review. In most instances the hearing will be conducted virtually using technology enabling the Hearing Panel and parties to simultaneously see and hear the proceedings while the parties and Hearing Panel are in different locations.

## **6. Case Presentation & Questioning**

The hearing is not intended to be a repeat of the investigation or an exhaustive review of the evidence summarized in the Investigation Report. The Hearing Panel will be well-versed in the facts of the case based upon the Investigation Report and any responses to the Investigation Report submitted by the parties. The parties and their advisors will attend the hearing before the Hearing Panel. Other College administrators may attend at the request of or with the prior approval of the Hearing Panel, and the parties will be notified in advance of anyone who will be in attendance.

The Hearing Panel has absolute discretion to decide upon the format for the hearing and to determine which witnesses are relevant to their outcome determination. The Hearing Panel may decline to hear from a witness where they conclude that the information is not relevant for their outcome determination or

unduly duplicative of other testimony already provided at the hearing. A typical hearing may include brief opening remarks by a member of the Hearing Panel; questions posed by the Hearing Panel to one or both of the parties or witnesses; follow-up questions by one party to the other (typically with the Responding Party's advisor questioning the Reporting Party first); questions by the Hearing Panel to any witness; and follow-up questions by the parties (through their advisors) to any witness. The Hearing Panel will also afford the parties an opportunity at the end of the hearing to offer brief closing remarks. A decision whether to offer closing remarks is completely voluntary.

During the hearing, the Hearing Panel will provide each party an opportunity, through their advisor, to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the live hearing, the College will make available an individual who can ask the questions on the party's behalf at no cost to the party. If the party does not have an advisor and refuses the College's offer to provide an individual to ask questions on the party's behalf, then the party will not be permitted to ask questions of the other party or any witnesses.

## 7. Evidentiary Issues

### Presumption of non-responsibility and impact of non-participation

The Responding Party will be deemed responsible only where the Hearing Panel concludes that a preponderance of the evidence support a determination that the Responding Party engaged in sexual harassment. Neither party is required to participate in the investigation or any form of resolution under this Grievance Process, and the Hearing Panel will not draw any adverse inference from a decision by either of the parties not to participate.

The Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

### Evidence of prior or subsequent misconduct

Prior or subsequent conduct of the Responding Party may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of sexual harassment by the Responding Party, either before or after the incident in question, regardless of whether there has been a prior finding of sexual harassment, may be deemed relevant to the determination of responsibility for the sexual harassment under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar sexual harassment. Such prior or subsequent conduct may subject the Responding Party to additional sanctions. The Hearing Panel will determine the relevance of this information and both parties will have access to information regarding this information in the same manner they are provided access to all evidence gathered during the investigation.

### Reporting Party's prior sexual history

At all stages of the investigation and hearing process, questions and evidence about the Reporting Party's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party and are offered to prove consent. However, even in the context of a prior sexual relationship, consent to one

sexual act on one occasion does not constitute consent to another sexual act on a different occasion. The Hearing Panel will explain to the party proposing the questions during the hearing any decision to exclude a question as not relevant.

#### Relevance of Evidence

The Investigator will determine what evidence is relevant to include in the Investigation Report. The parties and their advisors 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 even if deemed immaterial or irrelevant by the Investigator.

The Hearing Panel has the ultimate discretion in determining the relevance of any proffered evidence and to include or exclude certain types of evidence or questions. Evidence that is determined to have been offered for an improper purpose, such as to embarrass or harass another party or witness, will not be considered by the Investigator or the Hearing Panel and could be grounds for an independent complaint of retaliation.

Only relevant cross-examination and other questions may be asked of a party or witness. Before any party or witness answers a cross-examination or other question from an advisor, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### Expert opinions

When expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation, the investigator may consult medical, forensic, technological or other experts. Information and opinions from experts may be sought by the investigator or proffered by any of the parties. When expert opinion information is directly related to the allegations raised in the Formal Complaint, the parties will be apprised of the information and provided an opportunity to submit additional expert information.

#### Privileged Information

No party will be required or permitted to use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### 8. Notice of Decision

Following the hearing, the Hearing Panel will consider all of the evidence and make a determination, by a preponderance of the evidence, whether the Responding Party has violated the Policy. The Hearing Panel will simultaneously issue to both parties a written Notice of Decision within ten (10) business days of the hearing, which will contain:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's 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 Hearing Panel imposes on the Responding Party, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the Reporting Party; and
- An explanation of the College's appeal procedures.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **9. Remedies and Sanctions**

Where there is a finding of responsibility, the Hearing Panel is responsible for determining appropriate remedies and sanctions. Remedies will be designed to restore or preserve the Reporting Party's equal access to Concordia's education programs and activities. Remedies may include sanctions imposed upon a Responding Party who is found responsible for violating the College's Policy Prohibiting Sexual Harassment. Such sanctions may include a variety of institutional responses or requirements, including, but not limited to, the following:

**For students:** expulsion; suspension (usually, at a minimum, the greater of either 1 year or the remaining amount of time the Reporting Party will remain a student at the College); disciplinary probation; restriction of privileges; required assessment or counseling; required attendance at educational programs; restitution; not being allowed to represent the College in leadership, volunteer, or paid positions; removal from campus housing; revocation of an honor or degree, and any other sanctions listed in the Student Code of Conduct or deemed appropriate under the circumstances.

**For staff and faculty:** a disciplinary warning, unpaid suspensions, suspension of promotion and salary increments, loss of prospective benefits, major fines, reduction in salary, suspension from service, suspension or withdrawal of privileges, demotion, termination of employment, and any other available sanctions as specified by the Faculty or Staff Handbooks, as applicable. If the Hearing Panel determines that it is more likely than not that a faculty member has violated this Policy and that dismissal may be an appropriate sanction, the matter will be referred to the President, or the President's designee, for appropriate process and decision, which shall be determined and administered in a manner consistent with the Faculty Handbook.

The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances as found by the Hearing Panel. In keeping with the College's commitment to foster an environment that is safe, inclusive, and free of sexual harassment, the Grievance Process provides the Hearing Panel with wide latitude in the imposition of sanctions tailored to circumstances of each unique matter.

The imposition of sanctions is designed to eliminate sexual harassment, prevent its recurrence, and remedy its effects, while supporting the College's educational mission and legal obligations. In determining the appropriate sanctions, the Hearing Panel will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the sexual harassment;
- Whether the sexual harassment included violence;
- The impact of the sexual harassment on the Reporting Party;
- The impact or implications of the sexual harassment within the Concordia community;
- Prior misconduct by the Responding Party, including the Responding Party's relevant prior disciplinary history, at Concordia or elsewhere, and any criminal convictions;
- Whether the Responding Party has accepted responsibility for the sexual harassment;
- The Reporting Party's stated preferences;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling factors.

The Title IX Coordinator is responsible for implementation of any remedies and sanctions imposed by the Hearing Panel. Sanctions become effective either after the time for appeal has expired, or, if a party appeals the Hearing Panel's decision, after the Appeal Adjudicator issues a determination affirming the Hearing Panel's decision.

## **G. Appeals**

### **1. Appeal of Dismissal**

A party wishing to appeal a decision by the College to dismiss a Formal Complaint or any allegations, may do so by submitting a written letter of appeal to the Title IX Coordinator within three (3) business days of when the Title IX Coordinator sent the Notice of Dismissal to the parties. A decision denying a request to dismiss a Formal Complaint, or any allegations cannot be the subject of an appeal. The letter of appeal should state the grounds for appeal. The non-appealing party will have an opportunity to review and respond to the letter of appeal. A non-appealing party's response to an appeal must be received within three (3) business days of notice of the appeal letter. The Title IX Coordinator will provide the Formal Complaint, Notice of Dismissal and any other information relevant to the appeal to the Appeal Adjudicator for review.

The Appeal Adjudicator will not be the Title IX Coordinator or anyone who has had any other previous involvement in the matter. If a Reporting Party or Responding Party has any concern that the Appeal Adjudicator has a conflict of interest, such concern should be reported to the Title IX Coordinator no later than either two (2) business days after receiving the notice of the Notice of Dismissal.

Either or both parties may contest the dismissal determination on any one or more of 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 that could materially affect the outcome of the matter; and
- The Title IX Coordinator, Investigator, or Hearing Panel members had a conflict of interest or bias for or against reporting parties or responding parties generally or the individual Reporting Party or Responding Party that affected the outcome of the matter.

If a party appeals the Notice of Dismissal, the Appeal Adjudicator will review the appeal, the Formal Complaint, the Notice of Dismissal and other relevant information to determine whether the appeal has merit. In reviewing any appeal, the Appeal Adjudicator has the ability to affirm the Title IX CORE Team decision or overturn the decision and remand the matter for further investigation and adjudication. The Appeal Adjudicator will simultaneously issue to both parties a written decision describing the result of the appeal and the rationale for the result within three (3) business days after receipt of all appeal documents.

### **2. Appeal of Hearing Panel Decision**

A party wishing to appeal a decision by the Hearing Panel may do so by submitting a written letter of appeal to the Title IX Coordinator within three (3) business days of when the Title IX Coordinator sent the Hearing Panel's Notice of Decision to the parties. The letter of appeal should state the grounds for appeal. The non-appealing party will have an opportunity to review and respond to the letter of appeal. A non-appealing party's response to an appeal must be received within three (3) business days of notice of the appeal letter. The Title IX Coordinator will provide the Investigation Report, the Hearing Panel's Notice of Decision, the appeal letters, and any other information relevant to the appeal to the Appeal Adjudicator for review.

The identity of the Appeal Adjudicator and instructions on how to appeal will be included in the Hearing Panel's Notice of Decision. The Appeal Adjudicator will not be the Title IX Coordinator, a member of the Hearing Panel, the Investigator, or have had any other previous involvement in the matter. If a Reporting Party or Responding Party has any concern that the Appeal Adjudicator has a conflict of interest, such concern should be reported to the Title IX Coordinator no later than two (2) business days after receiving the notice of the Notice of Decision.

Either or both parties may contest the Hearing Panel's determination regarding responsibility on any one or more of 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 was made that could materially affect the outcome of the matter; and
- The Title IX Coordinator, Investigator, or Hearing Panel members had a conflict of interest or bias for or against reporting parties or responding parties generally or the individual Reporting Party or Responding Party that affected the outcome of the matter.

If either of the parties appeals the Hearing Panel's determination, the Appeal Adjudicator will review the appeal, the Investigation Report, the Notice of Decision and other relevant information to determine whether the appeal has merit. In reviewing any appeal, the Appeal Adjudicator has the ability to affirm the Hearing Panel's decision, overturn the Hearing Panel's decision, or remand the matter for further investigation and adjudication. The Appeal Adjudicator will simultaneously issue to both parties a written decision describing the result of the appeal and the rationale for the result within three (3) business days after receipt of all appeal documents.

## **VII. RECORDKEEPING**

The College will maintain for a period of seven years, records of the following:

- Each report of sexual harassment and all supportive measures offered and provided in response;
- Each investigation and hearing conducted under the Grievance Process including any determination regarding responsibility and any audio or audiovisual recording or transcript of the investigation and hearing conducted under the Grievance Process, any disciplinary sanctions imposed on a responding party, and any remedies provided to a reporting party designed to restore or preserve equal access to the College's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, Hearing Panel members, Appeal Adjudicators, and Informal Resolution Process facilitators. These training materials are publicly available on Concordia's [Title IX website](#).

## **VIII. POLICY REVIEW**

### **A. Ongoing Internal Policy Review**

This policy is maintained by the Title IX Team and subject to ongoing review and improvement. The Title IX Team will review this Policy on at least an annual basis. To assist the Title IX Team in its review of its policies and practices, Concordia College has established a Title IX Advisory Group that is tasked with gathering information from the Concordia community and providing recommendations on policy revisions and enhancements. The Title IX Advisory Group is appointed by Concordia's President and is comprised of student, faculty and staff members.

The Title IX Advisory Group will also provide feedback on the College's education, awareness and prevention initiatives, and on the resources and support available to individuals involved in the College's process. The Title IX Advisory Group will provide opportunities for students, staff, faculty and other members of the Concordia community, especially individuals affected by this Policy and the Grievance Process, to provide feedback on their experience, especially with regard to support services and the Grievance Process. The Title IX Advisory Group will submit its reports to the Title IX Team and to the President.

#### **B. External Recourse**

Nothing in this Policy or Grievance Processes is intended to interfere with the right of any individual to pursue other avenues of recourse which may include, but are not limited to, filing a complaint with the United States Department of Education, Office for Civil Rights (OCR). Any individual who has made a report of sexual harassment and/or initiated the Grievance Process, and who believes the College's response was inadequate, or who otherwise believes they have been discriminated against, may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education. The OCR office that oversees institutions in Minnesota, including Concordia, is:

#### **U.S. Department of Education**

Office for Civil Rights

Citigroup Center

500 W. Madison Street, Suite 1475

Chicago, IL 60661-4544

Tel: 312.730.1560

TDD: 877.521.2172

Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

College policies are subject to change at the discretion of the college.

November 14, 2023 – Editorial. June 9, 2022 - Editorial. September 30, 2021- Updated; August 14, 2020 - Updated; September 16, 2019 - Editorial updates; August 28, 2018 – Editorial updates; September 1, 2017 - Editorial updates; September 20, 2016 - Editorial updates, August 2016 – Updated