

TITLE IX

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Livingstone College

SEXUAL MISCONDUCT POLICY AND PROCEDURES

Important Information for Individuals Who May Be Victims of Sexual Assault 1

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Livingstone College

SEXUAL MISCONDUCT POLICY AND PROCEDURES

IMPORTANT INFORMATION FOR INDIVIDUALS WHO MAY BE VICTIMS OF SEXUAL ASSAULT:

If you or someone you know may have been a victim of Sexual Assault or any other type of Sexual Misconduct, you are strongly encouraged to consult Exhibit A to this Policy and to seek immediate assistance from one or more of the sources listed there.

ARTICLE I. INTRODUCTION

Notice of Nondiscrimination

As a recipient of federal funds, Livingstone College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), prohibits discrimination based on the gender of students and employees of educational institutions which receive federal financial assistance. Under certain circumstances, Sexual Misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to Livingstone College Title IX Coordinator or to the U.S. Department of Education’s Office for Civil Rights.

Mark Sanders, Title IX Coordinator is located in the Office of Human Resources, Hood Building. Mr. Sanders may be contacted by phone at 704-216-6080 or by e-mail at msanders@livingstone.edu

(a) Overview

The College is committed to maintaining and strengthening an environment founded on civility and respect. The College also is committed to providing programs, activities, and an educational environment free from sex discrimination. Under certain circumstances, Sexual Misconduct (as defined in Exhibit B) may constitute sexual discrimination prohibited by Title IX. The College is committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of reports of Sexual Misconduct. These Sexual Misconduct Procedures (these “Procedures”) include available resources (Exhibit A); describe prohibited conduct; and establish procedures for responding to reports of Sexual Misconduct.

(b) This Policy applies to any allegation of Sexual Misconduct made by or against a Student or an employee of the College or a third party, regardless of where the alleged Sexual Misconduct occurred, if the conduct giving rise to the Complaint is related to the College’s academic, educational, athletic, or extracurricular programs or activities. The College’s disciplinary authority, however, may not extend to third parties who are not Students or employees of the College. Additionally, although there is no geographical limitation to invoking this Policy, Sexual Misconduct that is alleged to have occurred at a significant distance from the College and/or outside of College property may be more difficult for the College to investigate.

In the case of allegations of Sexual Misconduct, this Policy supersedes all other procedures and policies set forth in other College documents.

Period of Limitations

If you are a student who believes you have been subjected to (1) sexual harassment by College faculty or staff; or (2) any other form of gender discrimination under Title IX, you may report such misconduct or file a formal complaint with the Title IX Program Coordinator. Complaints must be submitted in writing not more than 300 days after the incident(s) in question. The entire complaint procedure and complaint form can be found on Livingstone College’s website.

ARTICLE II. STATEMENT OF POLICY

SEXUAL MISCONDUCT POLICY

Sexual Misconduct is defined as any form of sexual contact without the consent of all parties involved, which includes but is not limited to:

- Sexual Intercourse committed using physical force, coercion, intimidation, or threat (actual or implied) by a person(s) known or unknown to the victim.
- Non-Consensual Sexual Intercourse (attempted or committed) including anal, vaginal, or oral penetration with any object, however slight, and without regard to the gender of either party.
- Non-Consensual Sexual Contact (attempted or committed) including any intentional sexual touching with any object, however slight, and without regard to the gender of either party.
- Attempted intercourse, sexual touching, exhibitionism, or sexual language of a threatening nature by a person(s) known or unknown to the victim.
- Sexual Exploitation, including taking non-consensual or abusive sexual advantage of another person for the benefit or advantage of anyone other than the person being exploited. Examples may include, but are not limited to, nonconsensual video or audio taping of sexual activity, engaging in voyeurism, or going beyond the boundaries of consent (such as allowing another person to watch you have consensual sexual activity without the knowledge or consent of the other party) The need for consent of individuals shall include situations where a person is unable to give consent because of mental incapacitation, drug or alcohol influence, or loss of consciousness.

Consent includes healthy sexual activities involving mutually expressed and understood consent:

- Both individuals are physically free and capable to act
- Both are clear about their intent to engage in sexual activities and are willing to do so
- Silence does not in and of itself constitute consent
- Past consent of sexual activities does not imply ongoing future consent
- The act is free of any type of coercion
- Both are sober of all substances and mentally capable to consent to the act

RECOMMENDED PROCEDURES TO TAKE AFTER A SEXUAL ASSAULT

- If you are in immediate danger, call 911 for help
- Immediate medical attention is recommended to treat any injuries that may have been sustained, including any possible sexually transmitted infection, and to collect or establish information related to the rape or assault.

Immediate medical needs can be taken care of by the College Health Center, or a hospital, as necessary.

College officials may accompany the person, at his/her request or consent, and render whatever assistance needed.

- Counseling for both a person who has been the victim of sexual assault and those accused may be provided by the

Livingstone College Counseling staff or those who are in a position to assist. In the event that long-term assistance is necessary, referrals to the appropriate outside resources may be made.

- Contact law enforcement (not required)
- Contact the Dean of Students for support, or to file a complaint against the perpetrator

EVIDENCE THRESHOLD

In order to maintain and preserve the educational nature of the College, actions taken under the Code of Conduct are not intended to imitate or to serve as a substitute for civil or criminal proceedings, nor are formal rules of evidence utilized in such cases applicable to proceedings of the College under the Code of Conduct. Livingstone College utilizes a preponderance of evidence as opposed to “beyond a

shadow of doubt.”

SANCTION OR PREVENTITIVE MEASURES

The following sanctions for a policy violation include but are not limited to:

- No contact orders
- Restriction of access to residence hall, campus buildings, and campus grounds
- Counseling Intervention requirements
- Suspension
- Dismissal

REPORTING

Victims of sexual misconduct are encouraged to file information regarding alleged Sexual Misconduct to the Title IX Coordinator, the office of the Dean of Students, and/or the campus police and Public Safety. The report may be informational and not require immediate action, or may be in the form of a complaint for action to be taken immediately. Actions taken by the College or the campus police may be separate and independent. College information will be kept in as confidential a manner as legally permissible.

Sometimes victims are hesitant to report to College officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to College officials. To encourage reporting, Livingstone College pursues a policy of offering victims of sexual misconduct immunity from being charged for policy violations related to the incident.

While violations cannot be completely overlooked, the College will provide referrals to counseling and may require educational options, rather than punishment, in such cases.

Retaliation against any person for filing, supporting, or providing information in connection with a Complaint of Sexual Misconduct is strictly prohibited. Any person who feels that he or she has been subjected to Retaliation should make a report to the Title IX Coordinator.

CONDUCT PROCESS OPTIONS

Informal Process. The Informal Process provides Livingstone College and/or those who believe they have been sexually assaulted with a range of options designed to bring about resolution of their concerns. While an initial investigation will be pursued for every identified complaint, disciplinary action will not be taken against the accused unless the formal complaint process is initiated by the accuser or the College. Depending upon the nature of the complaint and the wishes of the accuser, informal resolution may involve one or more of the following:

1. Reviewing the College Sexual Assault Policy with the accused.
2. Providing the opportunity for the accuser to express his/her feelings about what allegedly occurred. This can be expressed in writing or communicated through a designated College representative or in person via a privileged communication source if both the accuser and the accused agree to a facilitated meeting.
3. The determination of any future interaction as agreed upon by the accuser and accused.

Formal Process. The Formal Process is used when the person bringing the complaint wants to file a complaint of sexual assault against another member of the community and/or if the College, after conducting an initial investigation, determines there is sufficient evidence to make a charge of sexual misconduct. The case will be referred to the College Conduct Board as described in the Conduct Process section of the handbook.

RELATIONSHIP OR DATING VIOLENCE POLICY

Relationship or Dating Violence is defined as any hurtful or unwanted physical, sexual, verbal, or emotional act inflicted by a casual or intimate dating partner who is or has been in a social relationship of a romantic or intimate nature with the victim with the intention, either real or perceived, of causing pain or injury to another person.

RECOMMENDED PROCEDURE TO TAKE IF YOU ARE A VICTIM OF RELATIONSHIP VIOLENCE

- If you are in immediate danger, call 911 for help
- Contact the Dean of Students for support, or to file a complaint against the perpetrator
- The Livingstone College Counseling Center can provide resources and support regarding how to handle relationships that involve violence
- Contact law enforcement (not required)
- Devise a safety plan and notify friends and family members of your safety plan
- Seek medical treatment if you have been physically hurt by the other person

REPORTING RELATIONSHIP VIOLENCE

Victims of relationship violence are encouraged to file a report with the office of the Dean of Students and/or the police. The report may be informational and not require immediate action, or may be in the form of a complaint for action to be taken immediately. Actions taken by the College or the campus police may be separate and independent. College information may be kept in as confidential a manner as legally permissible. The College will cooperate to the fullest extent possible with state officials.

EVIDENCE THRESHOLD

In order to maintain and preserve the educational nature of the College, actions taken under the Code of Conduct are not intended to imitate or to serve as a substitute for civil or criminal proceedings, nor are formal rules of evidence utilized in such cases applicable to proceedings of the College under the Code of Conduct. Livingstone College utilizes a preponderance of evidence as opposed to “beyond a shadow of doubt.”

SANCTION OR PREVENTITIVE MEASURES

The following sanctions for a policy violation include but are not limited to:

- No contact orders
- Change in class schedules, meal times, or traveling schedules
- Restriction of access to residence hall, campus buildings, and campus grounds
- Counseling Intervention requirements
- Suspension
- Dismissal

STALKING POLICY

Stalking is defined as any person who engages in a course of conduct demonstrating unwanted or obsessive attention toward another whether in-person, remotely, or electronically wherein it would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

RECOMMENDED PROCEDURES TO TAKE IF YOU ARE BEING STALKED

- If you are in immediate danger, call 911 for help
- Clearly communicate an unwillingness to engage in further contact with the stalker
- Set firm personal boundaries with the person engaging in the stalking behavior
- If you are not comfortable with face-to-face interaction with the stalker, write a letter to the person
- Keep a journal of all contacts that the stalker has made with you and keep records of other interactions
- Devise a safety plan and let your friends know about it.
- Contact the Dean of Students for support, or to file a complaint against the perpetrator
- The Counseling Center can provide resources and support regarding how to handle stalking
- Contact law enforcement (not required)
- Seek medical treatment if you have been physically hurt by the other person

REPORTING

Victims of stalking are encouraged to file a report with the office of the Dean of Students and/or the campus police. The report may be informational and not require immediate action, or may be in the form of a complaint for action to be taken immediately.

Actions taken by the College or the campus police may be separate and independent. College information will be kept in as confidential a manner as legally permissible. The College will cooperate to the fullest extent possible with state officials.

The College considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The College does not condone underage drinking or the use of illegal drugs; however, the College may extend limited immunity from punitive sanctioning in the case of illegal alcohol or drug use to victims, witnesses, and those reporting incidents and/or assisting the victims of Sexual Misconduct, provided that they are acting in good faith in such capacity and, in limited circumstances, may also extend such immunity to a Respondent.

EVIDENCE THRESHOLD

In order to maintain and preserve the educational nature of the College, actions taken under the Code of Conduct are not intended to imitate or to serve as a substitute for civil or criminal proceedings, nor are formal rules of evidence utilized in such cases applicable to proceedings of the College under the Code of Conduct. Livingstone College utilizes a preponderance of evidence as opposed to “beyond a shadow of doubt.”

SANCTION OR PREVENTITIVE MEASURES

The following sanctions for a policy violation include but are not limited to:

- No contact orders
- Change in class schedules, meal times, or traveling schedules
- Restriction of access to residence hall, campus buildings, and campus grounds
- Counseling Intervention requirements
- Suspension
- Dismissal

The Sexual Misconduct Policy is designed to protect the rights and needs of alleged victims and Respondents. Creating a safe environment is the responsibility of all members of the College community.

Livingstone College strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases.

The College has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, **and the College will investigate all allegations of Sexual Misconduct.**

(a) Prohibition on Sexual Misconduct.

The College prohibits Sexual Misconduct and is committed to the timely and fair resolution of Sexual Misconduct cases. The College encourages prompt reporting of all types of Sexual Misconduct. The College has defined Sexual Misconduct as any unwelcome conduct of a sexual nature.

However, not all unwelcome conduct of a sexual nature rises to the level of warranting full adjudication and/or discipline pursuant to these Procedures. In other words, while the College will investigate any and all reports of Sexual Misconduct, some Sexual Misconduct can be addressed effectively without full adjudication under these Procedures and/or without the imposition of formal disciplinary sanctions against the Respondent. These Procedures use the term “Actionable Sexual Misconduct,” as defined in Exhibit B, to identify those acts of Sexual Misconduct that do warrant full adjudication under, and discipline pursuant to, these Procedures.

(b) Prohibition on Retaliation.

Retaliation against any person participating in good faith in connection with a Complaint of Sexual Misconduct is strictly prohibited. Violations will be addressed through these Procedures and/or other applicable College disciplinary procedures. Any person who feels that he or she has been subjected to Retaliation should make a report to the Title IX Coordinator.

(c) Prohibition on Providing False Information.

Any individual who knowingly files a false report or Complaint under these Procedures, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a Complaint may be subject to disciplinary action. The College recognizes that a Complaint made in good faith will not be considered false just because the evidence does not confirm the allegation(s) of Sexual Misconduct.

(d) Confidentiality.

Standard of Confidentiality (Applicable to All Complaints). The College will respect and will make every feasible effort to properly preserve the confidentiality of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

To ensure confidentiality, information regarding alleged Sexual Misconduct will generally be disclosed by College personnel as follows:

- The College’s Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator.
- College personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the University may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct.
- College personnel may report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.
- University administrators will share information regarding alleged Sexual Misconduct with each other, as appropriate and necessary, in order to address and resolve the Complaint at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct.

Strict and Heightened Confidentiality.

- 1) Strict Confidentiality.** Individuals may discuss alleged Sexual Misconduct in strict confidence with College employees working in the following offices (“Strictly Confidential Resources”):

- (a) College Counselor – Mrs. Elizabeth Alston-Pinckney (704)216-6100; Ealston-pinckney@livingstone.edu;
- (b) Office of Health Services – Nurse Ethel Peebles; (704) 216-6111; Ep Peebles@livingstone.edu; and
- (c) Campus Minister – Troy Russell; (704-216-6309; Trussell@livingstone.edu;

This means that Personally Identifiable Information shared with Strictly Confidential Resources is not part of students’ or employees’ College records and will not be reported to other College personnel, to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions of imminent physical harm, for example)).

Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that College employees who are not Strictly Confidential Resources are Responsible Employees. Communications made to Responsible Employees are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources.

- 2) Heightened Confidentiality.** If information regarding alleged Sexual Misconduct is shared with Responsible Employees, and the alleged victim to whom the information pertains desires that such individuals and/or the Title IX Coordinator not share the information with other Responsible Employees, with the Respondent, or with others, even as appropriate and necessary to address the allegations, such individual must request that the College apply heightened confidentiality to such information. This request must be made to the Assigned Title IX Coordinator.

The College takes requests for heightened confidentiality seriously; however, such requests may limit the College’s ability to investigate and take reasonable action in response to a Complaint. ^[1] The College must therefore evaluate heightened confidentiality requests in the context of the College’s commitment to provide a reasonably safe and non-discriminatory environment. In order to make such an evaluation, the Assigned Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh requests for heightened confidentiality against the following factors:

- (a) the seriousness of the alleged Sexual Misconduct;
- (b) the alleged victim’s age;
- (c) whether there have been other Complaints of Sexual Misconduct against the Respondent; and
- (d) the applicability of any laws mandating disclosure.

The Assigned Title IX Coordinator will inform the person requesting heightened confidentiality of the College’s limitations on maintaining heightened confidentiality and whether the College intends to pursue investigation and/or resolution in spite of the person’s request.

Even when the College determines to abide by a request for heightened confidentiality

(and even if such request limits the College's ability to take disciplinary action against the Respondent):

- (i) To the extent practicable and appropriate, the College will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the College may take appropriate interim measures to ensure an individual's safety even in the absence of a College proceeding.
- (ii) Information regarding the alleged Sexual Misconduct may be included in College records, as necessary and appropriate.
- (iii) College personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the College may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

Please note that the College cannot control disclosures by students or third parties.

^[1] A Respondent has a right to know the name of the accuser and information regarding the nature of the allegations in order to defend against the Complaint; thus, the College may not be able to both adjudicate the Complaint and maintain the confidentiality of the Complainant during that process.

(e) Requests Not to Investigate and Refusals to File a Complaint or to Cooperate.

Alleged victims may (i) request that the College not investigate the information or allegation(s) reported, (ii) refuse to file a Complaint, and/or (iii) refuse to cooperate in the investigation and/or resolution of allegation(s).

The College takes such requests and decisions seriously; however, such requests and decisions may limit the College's ability to investigate and take reasonable action in response to a Complaint. In such cases, the College will evaluate such requests and decisions in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment.

In order to make such an evaluation, the Assigned Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh such requests and decisions against the following factors:

- (i) the seriousness of the alleged Sexual Misconduct;
- (ii) the alleged victim's age;
- (iii) whether there have been other Complaints of Sexual Misconduct against the Respondent;
- (iv) the applicability of any laws mandating disclosure.

The Assigned Title IX Coordinator will inform the person requesting that the College not pursue an investigation, refusing to file a Complaint and/or or refusing to participate in the investigation or resolution of allegations of Sexual Misconduct if the College intends to pursue investigation and/or resolution in spite of the person's request or refusal.

Regardless of an individual's requests or decisions, Title IX requires the College to take reasonable action in response to the information known to it. Thus, the College may take such measures as are deemed necessary by the Assigned Title IX Coordinator.

Additionally, even if the College cannot take disciplinary action against the Respondent because of a refusal to file a Complaint or participate in the investigation and/or resolution of allegations,

to the extent practicable and appropriate, the College will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the College may issue a "no-contact" order or take other appropriate interim measures to ensure an individual's safety even in the absence of a formal proceeding.

The Complaint or other information regarding alleged Sexual Misconduct may also be used as an anonymous report for data collection purposes under the Clery Act.

(f) Limited Immunity.

The College considers the reporting and adjudication of Sexual Misconduct cases to be of paramount importance. The College does not condone underage drinking or the use of illegal drugs; however, the College may extend limited immunity from punitive sanctioning in the case of illegal alcohol or drug use to victims, witnesses, and those reporting incidents and/or assisting the victims of Sexual Misconduct, provided that they are acting in good faith in such capacity and, in limited circumstances, may also extend such immunity to a Respondent.

(g) Individuals with Disabilities.

The College will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in these Procedures. Employees seeking accommodations may contact Human Resources. Students requesting accommodations may contact the Coordinator of Services for Students with Disabilities.

ARTICLE III. REPORTING ALLEGED SEXUAL MISCONDUCT

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see Exhibit A.

(a) Reporting to Local Law Enforcement.

Individuals may report Sexual Misconduct directly to local law enforcement agencies by dialing 911. Individuals who make a criminal complaint may also choose to pursue a College Complaint simultaneously. A criminal investigation into the matter does not release the College from its obligation to conduct its own investigation (nor is a criminal investigation determinative of whether Actionable Sexual Misconduct, for purposes of these Procedures, has occurred). However, the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College may take interim measures when necessary to protect the alleged victim and/or the College community.

Individuals may choose not to report alleged Sexual Misconduct to law enforcement authorities. The College respects and supports individuals' decisions with respect to reporting; nevertheless, the College may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations at issue.

(b) Reporting to the College.

Individuals may choose *not* to report alleged Sexual Misconduct to a campus official. The College respects and supports the individual's decision with respect to reporting; however, if information about Sexual Misconduct comes to the attention of the College, the College may (1) start an investigation even in the absence of a filed Complaint and/or (2) notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Anyone wishing to report Sexual Misconduct to the College should contact any one of the following individuals or offices:

- (i) Campus Security.** The College's Campus Security is located in the Robinson Health Center and can be reached by phone at 6164. Campus Security Officers are available 24 hours a day, seven days

a week.

(ii) Office of Dean of Students. The Office of Dean of Students is located in the Walls Center Room 218. The Office of Student of the Dean of Students is available during business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) by phone at 704-216-6971.

(iii) Title IX Coordinator. Livingstone College's Title IX Coordinator is Mark Sanders; Human Resource Office located is in the Hood Building on the first floor. This office may be contacted during business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) by phone at 704-216-6080, or by email at msanders@livingstone.edu.

(iv) Deputy Title IX Coordinator. Livingstone College's Deputy Title IX Coordinator is Ms. Te'Asia Gist located in Goler Hall. Ms. Gist is available during business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) by phone at 704-216-6820, or by email at tgist@livingstone.edu

If an employee of Campus Security, the Office of the Dean of Students, or the Human Resources Office receives a report of alleged Sexual Misconduct, that employee must notify the College's Title IX Coordinator.

Individuals may also file anonymous reports by calling 704-216-6080. It may be very difficult for the College to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

No member of the College community may discourage an individual from reporting alleged incidents of Sexual Misconduct. As such, an individual may report alleged Sexual Misconduct to a faculty or staff member other than those referenced above. A faculty or staff member with any knowledge about a known or suspected incident of Sexual Misconduct must report the incident to the College's Title IX Coordinator. Excluded from this requirement are student employees and employees who are statutorily barred from reporting. No employee is authorized to investigate or resolve Complaints without the involvement of the College's Title IX Coordinator.

ARTICLE IV. PROCEDURES APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT

(a) Overview.

- (i) Oversight.** The Assigned Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with the College.
- (ii) Conflicts.** If any administrator designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent (including, but not limited to, the Title IX Coordinator), then the President will appoint another College administrator to perform such person's duties under this Policy. (If the President is the Respondent, then the Title IX Coordinator will appoint another College administrator to perform his duties under this Policy.)
- (iii) Support Persons / Advisors.** Alleged victims, Complainants, and Respondents may be accompanied by a support person / advisor of their choice during any meeting or interview held pursuant to this Policy. The support person / advisor may consult with the person he or she is there to support but may not participate in the meeting or interview by asking or answering questions or by making statements to the interviewer(s). A support person / advisor must maintain confidentiality regarding any and all communications exchanged pursuant to this Policy.
- (iv) Timing.** The College will make every reasonable effort to ensure that the investigation and

resolution of a Complaint occurs in as timely and efficient a manner as possible. The College's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances. Both the Complainant and the Respondent generally will receive a Final Outcome Letter within 20 calendar days of the Sexual Misconduct Panel's decision.

Any party may request an extension of any deadline by providing the Assigned Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Assigned Title IX Coordinator may modify any deadline contained in this Policy as necessary and for good cause.

(v) **Interim Measures.** If at any point during the complaint, investigative or disciplinary processes, the Assigned Title IX Coordinator deems it necessary for the protection of any member of the College community, the Assigned Title IX Coordinator may take actions such as the following:

1) For student Respondents:

a) requesting that the Office of Dean of Students:

- i) suspend the Respondent from campus housing on an interim basis and/or restrict his or her movement on campus, or
- ii) summarily suspend the Respondent¹;

2) For employee Respondents, requesting that the individual authorized to make personnel decisions regarding the employee at issue:

- a) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or
- b) reassign or place on administrative leave such Respondent.

These actions may be appealed to the Vice President for Student Affairs or Director of Human Resources (as deemed appropriate by the Assigned Title IX Coordinator), who's decision regarding their imposition will be final.

(b) **Alleged Victim's Initial Meetings with the Assigned Title IX Coordinator.**

(i) **Alleged Victim's Initial Meeting with the Assigned Title IX Coordinator.** As soon as is practicable, the Assigned Title IX Coordinator will contact the alleged victim to schedule an initial meeting. (If the alleged victim is not the person who reported the alleged Sexual Misconduct, the Assigned Title IX Coordinator also will attempt to meet as soon as possible with the person who made the report to gather information from that person.) At this initial meeting the Assigned Title IX Coordinator will, as applicable:

¹ A summary suspension may be imposed only when, in the judgment of the Office of Dean of Students, the Student Respondent's presence on the College's campus would constitute a threat to the safety and well-being of members of the campus community.

- 1) provide the alleged victim a copy of this Policy;
- 2) explain avenues for formal resolution and informal resolution (mediation) of the Complaint;
- 3) explain the steps involved in a Sexual Misconduct investigation;
- 4) discuss confidentiality standards and concerns with the alleged victim;
- 5) provide the alleged victim with a Sexual Misconduct Complaint Form (a copy of which is

attached as Exhibit C) and determine whether the alleged victim wishes to file a Complaint and participate in the College's investigation and resolution of the Complaint²;

- 6) refer the alleged victim to the Counseling Center or other resources, as appropriate; and
- 7) discuss with the alleged victim, as appropriate, possible interim measures that can be provided to the alleged victim during the pendency of the investigative and resolution processes. The College may implement such measures if appropriate and reasonably available whether a formal Complaint has been filed (with either campus administrators or law enforcement agencies) or whether an investigation has commenced (by either campus administrators or law enforcement agencies). Interim measures may include, but are not limited to:
 - a) issuing no-contact orders to prevent any contact between the alleged victim, the Respondent, witnesses, and/or third parties;
 - b) providing the alleged victim an escort to ensure that he or she can move safely between classes, work, and/or activities;
 - c) changing an alleged victim's or a Respondent's on-campus housing, if any, to a different on-campus location and providing assistance from College support staff in completing the relocation;
 - d) arranging to dissolve a campus housing contract and offering a pro-rated refund;
 - e) changing work arrangements;
 - f) rescheduling class work, assignments, and examinations;
 - g) arranging for the alleged victim to take an incomplete in a class;
 - h) moving the alleged victim or the Respondent from one class section to another;
 - i) permitting a temporary withdrawal from the College;
 - j) providing alternative course completion options;
 - k) providing counseling services; and
 - l) providing academic support services.

Following the initial meeting with the alleged victim the Assigned Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the alleged victim. Such determination will be promptly communicated to the alleged victim (and in no event later than the point at which it is communicated to the Respondent) and the Respondent.

- (ii) Respondent's Initial Meeting with the Assigned Title IX Coordinator.** If the alleged victim wishes to pursue a formal or informal resolution through the College or if the College otherwise deems that a further investigation is warranted, as soon as is reasonably practicable after the Assigned Title IX Coordinator's initial meeting with the alleged victim, the Assigned

² An alleged victim who elects to file a Complaint and participate in the College's investigation and resolution of the Complaint becomes a Complainant for the purposes of this Policy.

Title IX Coordinator will schedule an initial meeting with the Respondent. During the initial meeting with the Respondent, the Assigned Title IX Coordinator will, as applicable:

- 1) provide the Respondent, in writing, sufficient information consistent with state and federal privacy laws and, if applicable, the alleged victim's request for confidentiality, to allow him or her to respond to the substance of the allegation, including, if possible, the name of the alleged victim and the date, location and nature of the alleged Sexual Misconduct;
- 2) provide the Respondent a copy of this Policy;
- 3) explain the College's procedures for formal resolution and informal resolution (mediation) of

the Complaint;

- 4) explain the steps involved in a Sexual Misconduct investigation;
- 5) discuss confidentiality standards and concerns with the Respondent;
- 6) discuss non-Retaliation requirements with the Respondent;
- 7) inform the Respondent of any interim measures already determined and being provided to the alleged victim that directly affect the Respondent (e.g., changing his or her class schedule, or moving him or her to an alternate residence hall);
- 8) refer the Respondent to the Counseling Center or other resources, as appropriate; and
- 9) discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent during the pendency of the investigative and resolution processes. The College may implement such measures if requested, appropriate, and reasonably available, whether a formal Complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced.

(c) The Investigation.

(i) The Assigned Title IX Coordinator's Initial Determination.

The Assigned Title IX Coordinator will determine that further investigation of the Complaint should be conducted unless it is clear on its face and/or based on the Assigned Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the Respondent engaged in Actionable Sexual Misconduct.

In the event that the Assigned Title IX Coordinator determines that further investigation of the Complaint should not be conducted, he or she will determine and document (in consultation, as necessary, with the Complainant, the Respondent, and other College administrators) the appropriate resolution of the Complaint and inform the parties of the same. Appropriate resolutions may include, but are not limited to, dismissal of the Complaint; conferences with one or both of the parties; or the implementation of protective measures, such as changes in class schedule or living arrangements.

The Complainant and/or the Respondent may appeal the Assigned Title IX Coordinator's decision in writing to the Vice President for Student Affairs of the College or the Director of Human Resources (as deemed appropriate by the Assigned Title IX Coordinator) within ten days of receipt of the notice of closure.³ The Assigned Title IX Coordinator will promptly inform the other party of the appeal.

Following receipt of the appeal, the Vice President for Student Affairs or Director of Human Resources will make a determination as to whether the Complaint should proceed or the case should be closed and whether any additional or different remedial action is necessary. He or she will notify the Complainant and the Respondent concurrently of his or her decision.

³ If the Vice President for Student Affairs or the Director of Human Resources is the Respondent, then the Title IX Coordinator will appoint another College administrator to stand in his or her shoes in performing his or her duties under this Policy.

(ii) The Appointment of the Investigator.

If the Assigned Title IX Coordinator determines that further investigation should be conducted,

the Assigned Title IX Coordinator will promptly appoint an Investigator and will share his or her name and contact information with the Complainant and the Respondent and will forward the Complaint to the Investigator. Within three days of such appointment, the Investigator, the Complainant, or the Respondent may identify to the Assigned Title IX Coordinator in writing any real or perceived conflicts of interest posed by assigning such Investigator to the matter. The Assigned Title IX Coordinator will carefully consider such statements and will assign a different individual as Investigator if it is determined that a material conflict of interest exists.

(iii) The Investigator's Activities and Report.

Upon receipt of the Complaint, the Investigator will promptly begin his or her investigation, taking steps such as

- 1) conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
- 2) visiting, inspecting, and taking photographs at relevant sites; and
- 3) where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies).

Throughout the investigation, the Investigator will remain neutral.

The Investigator should obtain, where applicable and where possible, the written consent of any third-party witnesses to the disclosure, as contemplated by this Policy, of any Personally Identifiable Information contained in the Complaint, the Investigative Report, and/or any other documents the disclosure of which is contemplated by this Policy in order to further the resolution of the Complaint.⁴

The Investigator will complete a written investigative report that includes items such as summaries of all interviews conducted, photographs, and descriptions of relevant evidence, summaries of relevant electronic records, and a detailed report of the events in question (the "Investigative Report"). The Investigator will share the Investigative Report with the Assigned Title IX Coordinator, who will distribute it, concurrently, to the alleged victim and the Respondent. All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence; the Investigative Report may only be disclosed as contemplated by this Policy.

⁴ If the Investigator is unable to obtain the consent of such third-party witnesses, he or she will redact the Investigative Report to the extent necessary to avoid inappropriate disclosure of such witness's Personally Identifiable Information, while ensuring that such redaction does not prevent resolution of the Complaint.

(iv) The Assigned Title IX Coordinator's Evaluation of the Investigative Report.

The Title IX Coordinator is responsible for determining and documenting, based on the Investigative Report and other available information, whether reasonable grounds exist to believe that the Respondent engaged in Actionable Sexual Misconduct.

The Title IX Coordinator will direct that the case will proceed unless it is clear from the Complaint and the Investigative Report that no reasonable grounds exist for believing that the conduct at issue

constitutes Actionable Sexual Misconduct. The Title IX Coordinator will specify which allegations and, if applicable, which other, related alleged misconduct, will go forward for resolution under these Procedures. If the Title IX Coordinator determines that the case should proceed, he will distribute the Investigative Report to the Complainant and the Respondent. All parties to whom the Investigative Report is distributed must maintain it in confidence.

If the Title IX Coordinator finds no reasonable grounds to believe that the Respondent engaged in Actionable Sexual Misconduct, then the Title IX Coordinator will determine and document the appropriate resolution of the Complaint and will promptly notify the parties of that determination.

(d) Formal Versus Informal Resolution.

The Complainant may elect to resolve his or her Complaint through the informal resolution (mediation) process in accordance with Article VI of this Policy, provided that (i) the Respondent agrees to such resolution, (ii) the Complainant and the Respondent are both Students or are both employees of the University, (iv) the Assigned Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (v) the Complaint does not involve Sexual Assault. Otherwise, a Complaint that is not closed pursuant to the Assigned Title IX Coordinator's evaluation of the Investigative Report will proceed to formal resolution in accordance with Article V of this Policy.

ARTICLE V. FORMAL RESOLUTION

(a) Respondent's Acknowledgement of Responsibility Prior to the Panel's Decision.

At any time prior to the Sexual Misconduct Panel's decision regarding responsibility, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Assigned Title IX Coordinator will propose sanction(s). If the Complainant and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved. If either the Complainant or the Respondent objects to such proposed sanction(s), then a Sexual Misconduct Panel will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to Section V (b) (v) of this Policy.

(b) The Formal Resolution Process.

In the case of formal resolution, a Sexual Misconduct Panel will determine whether the Respondent committed Actionable Sexual Misconduct. The Panel will make its determination by evaluating the Investigative Report and other available information regarding the Complaint and, as necessary, interviewing the Respondent, the Complainant, the Investigator, and other witnesses.

(i) **The Sexual Misconduct Panel.** The Assigned Title IX Coordinator will appoint the members of the "Sexual Misconduct Panel," to include at least three faculty and/or staff members trained to handle Sexual Misconduct Complaints. The Assigned Title IX Coordinator will share the Complaint and the Investigative Report with the Sexual Misconduct Panel.

(ii) **Notice of the Composition of the Sexual Misconduct Panel.** Promptly after appointing the members of the Panel, the Assigned Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent, setting forth the names of the individuals selected to serve on the Panel.

The parties may challenge the participation of any member of the Panel by submitting a written objection to the Assigned Title IX Coordinator within three days of receipt of the notice of the composition of the Panel. Such objection must state the specific reason(s) for the objection. The Assigned Title IX Coordinator will evaluate the objection and determine whether to alter the composition of the Panel. Any changes in the composition of the Panel will be provided in writing to both parties.

Submission of Written Materials by the Parties. Within five days of receipt of the notice of composition of the Panel, the Complainant and the Respondent may provide the Chair of the Panel with (1) a list of witnesses, if any, that they propose that the Panel interview and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and (2) a written statement of position.

Interviews. Both parties will have the opportunity to appear **separately** before the Panel, and the Panel may interview other individuals as deemed necessary. The Respondent may choose not to appear before the Panel; exercising this option will not preclude the Panel from making a determination regarding the Complaint filed against the Respondent.

(iii) Outcome.

The Decision of the Panel. Following the conclusion of its interviews, the Panel will confer and by majority vote determine whether the evidence (including the information provided in and by the Investigative Report, the parties' written statements, if any, and the testimony of the parties and witnesses) establishes that it is more likely than not that the Respondent committed Actionable Sexual Misconduct.

⁵In other words, the standard of proof will be the "preponderance of the evidence" standard.

1) Sanctions.

- a) Generally.** Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct and any record of prior discipline for Sexual Misconduct. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from the College, disciplinary probation, expulsion from campus housing, mandated counseling, and/or educational sanctions deemed appropriate by the Panel.

The Panel will determine sanctions, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation. The Panel will forward its determinations regarding sanctions to the Assigned Title IX Coordinator.

- b) Implementation of Sanctions.** Sanctions imposed generally are not effective until the resolution of any timely appeal pursuant to Section V (b) (v), below. However, if it is advisable in order to protect the welfare of the victim or the College community, the Panel may recommend and the Assigned Title IX Coordinator may determine that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

- 2) Final Accommodations and Corrective Action.** In addition to any sanctions imposed on the Respondent, promptly following the Panel's issuance of a determination of responsibility, the Assigned Title IX Coordinator will determine the final accommodations to be provided to the victim, if any, and the Assigned Title IX Coordinator will communicate such decision to the victim and, to the extent that it affects him or her, to the Respondent.

The Assigned Title IX Coordinator will also take steps, where necessary, to prevent the further harassment of or Retaliation against the Complainant, the alleged victim, or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing Sexual Misconduct or other counseling for the Respondent. The Assigned Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent.

Furthermore, the Assigned Title IX Coordinator will take prompt corrective action if the Complainant or the alleged victim experiences Retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant, the alleged victim, or other members of the College community. In cases involving Sexual Harassment, the Assigned Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Assigned Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant and/or alleged victim.

- 3) Final Outcome Letter.** The Panel will issue a written decision letter (the "Final Outcome Letter") concurrently to the Respondent and the alleged victim. The Final Outcome Letter

will set forth (1) the name of the Respondent, (2) the violation(s) of this Policy for which the Respondent was found responsible, if any, (3) sanctions imposed on the Respondent, if any, and it may set forth names of other individuals, such as a victim or witness, provided that such other individuals provide their written consent to such inclusion.

- 4) Confidentiality and Disclosure.** In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, Complaint investigation and resolution process is not open to the general public. Accordingly, documents prepared in connection with the Complaint investigation and/or resolution may not be disclosed outside of those processes except as may be required or authorized by law.

If it is determined, however, that the Respondent committed Actionable Sexual Misconduct, College policy does not prohibit the further disclosure of the Final Outcome Letter by either the alleged victim or the Respondent.

- (iv) Appeals.** The Complainant or the Respondent may appeal the decision of the Sexual Misconduct Panel and/or the sanction imposed on the Respondent within 14 calendar days from the date of the Final Outcome Letter. The decision of the Panel and the sanction imposed on the Respondent may, if desired, be appealed simultaneously.

- 1) Appeals of the Decision of the Panel Regarding Responsibility for Sexual Misconduct.** The only permissible grounds for an appeal are (a) availability of germane new evidence that could significantly impact the outcome and/or (b) procedural errors that significantly impacted the outcome.

Appeals of the decision of the Panel must be made in writing to the Vice President for Student Affairs (if the Respondent is a student); the Director of Human Resources (if the Respondent is a staff member or a non-tenured faculty member); and the University President (if the Respondent is a tenured faculty member). Appellants must provide a copy of their written appeal to the Assigned Title IX Coordinator. The Assigned Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal.

The Vice President for Student Affairs, Director of Human Resource, or President, as applicable, will make a determination (i) that the decision of the Panel should stand; (ii) that the decision of the Panel should be overturned; or (iii) that additional evidence should be obtained before making an appellate determination.

In the event that he or she determines that the decision of the Panel should be overturned or that additional evidence should be obtained, he or she will specify, after consultation with the Assigned Title IX Coordinator and other University administrators, as necessary, the appropriate steps to be taken to come to a final resolution of the Complaint. The Vice President for Student Affairs, Director of Human Resources, or President will notify the Complainant and the Respondent concurrently of the decision or action.

- 2) Appeals of Sanctions.**

The sanctions imposed on the Respondent may be appealed on grounds that the severity of the sanction imposed is incommensurate to the gravity of the Sexual Misconduct for which the Respondent was found responsible. Appeals must be made in writing to the Vice President for Student Affairs (if the Respondent is a student); the Director of Human Resources (if the Respondent is a staff member or a non-tenured faculty member); and the University President (if the Respondent is a tenured faculty member). Appellants must provide a copy of their written appeal to the Assigned Title IX Coordinator. The Assigned Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal.

The Vice President for Student Affairs, Director of Human Resources, or President, as applicable, will make a determination (a) that the decision of the Panel should stand, (b) that the decision of the Panel should be overturned, or (c) that additional evidence should be obtained before making an appellate determination.

In the event that he or she determines that the decision of the Panel should be overturned, he or she will specify (after consultation with the Assigned Title IX Coordinator and other College administrators, as necessary) the final sanctions to be imposed on the Respondent, which will not be subject to further appeal. The Vice President for Student Affairs, Director of Human Resources, or President will notify the Complainant and the Respondent concurrently of the decision or action.

When the Respondent is a faculty member with tenure and the sanction imposed by the Panel is termination of the Respondent's employment, the Complainant or the Respondent may appeal the President's determination with regard to the appeal of that sanction. Such appeals must be made in writing to the Academic Affairs Committee of the Board of Trustees (providing a copy of the appeal to the Assigned Title IX Coordinator). The Assigned Title IX Coordinator will promptly inform the other parties (*i.e.*, the Complainant or the Respondent) of the filing of the appeal.

The Academic Affairs Committee of the Board of Trustees will make a determination (a) that the decision of the President should stand, or (b) that the decision of the President should be overturned. Before making its decision, the Academic Affairs Committee of the Board of Trustees may request additional information from the Complainant, Respondent, or other individuals as it sees fit. The decision of the Academic Affairs Committee of the Board of Trustees is final.

- (c) **Documentation.** The College will retain documentation (including but not limited to the written Complaint, notifications, the Investigative Report, any written findings of fact, petitions for appeal, and any written communication between the parties), for at least seven years. Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely.

ARTICLE VI. INFORMAL RESOLUTION (MEDIATION)

Informal resolution is only appropriate if (i) the Complainant requests it, (ii) the Respondent agrees to such resolution, (iii) the Complainant and the Respondent are both Students or are both employees of the College, (iv) the Assigned Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (v) the Complaint does not involve Sexual Assault. The Complainant has the right to terminate the informal resolution process at any time and proceed with formal resolution.

(a) Respondent's Acknowledgement of Responsibility.

Informal resolution is only appropriate if (i) the Complainant requests it, (ii) the Respondent agrees to it, (iii) the Complainant and the Respondent are either students or employees of the College, (iv) the Title IX Coordinator determines that it is an appropriate mechanism for resolving the Complaint, and (v) the Complaint does not involve Sexual Assault.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is

appropriate for *all* of the claims at issue), then *all* of the claims must be resolved according to the informal resolution process.

Either party may terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator may, where appropriate, terminate or decline to initiate informal resolution, and proceed with formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceedings.

The informal resolution process may not necessarily result in a formal disciplinary action for the Respondent. However, the fact and details of the allegation(s) and the outcome of the informal resolution may be considered in connection with the evaluation of any subsequent Sexual Misconduct allegations against, and discipline-related decisions involving, the Respondent.

(b) The Informal Resolution Process.

(i) The Mediation; the Presiding Officer. When the Complaint is to be resolved according to the informal resolution process, there will be a mediation overseen by a Presiding Officer. The Assigned Title IX Coordinator will appoint the Presiding Officer.

(ii) Notice of the Mediation. Promptly after the Assigned Title IX Coordinator has appointed the Presiding Officer, the Assigned Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent, setting forth (1) the date, time and location of the mediation, and (2) the name of the individual selected to serve as the Presiding Officer.

Any party may challenge the participation of the Presiding Officer by submitting a written objection to the Assigned Title IX Coordinator within three days of receipt of the notice of the mediation. Such objection must state the specific reason(s) for the objection. The Assigned Title IX Coordinator will evaluate the objection and determine whether to change the Presiding Officer. Failure to submit a timely and proper objection will constitute a waiver of any right of objection. Any substitution of the party serving as the Presiding Officer will be provided in writing to both parties prior to the date of the mediation.

(iii) No Contact Prior to Mediation. The parties may not contact each other outside of the mediation, even to discuss the mediation.

(iv) Attendance. Both the Complainant and the Respondent are expected to attend the mediation. If either party fails to appear at the mediation, and such party was provided proper notice of the mediation as set forth above, then absent extenuating circumstances, the Presiding Officer may either direct that resolution of the Complaint be determined according to the formal resolution process set forth above.

(v) The Mediation.

(vi) Resolution. During the mediation, the Presiding Officer will attempt to facilitate the parties' resolution of the Complaint. If the mediation results in a resolution between the parties and the Assigned Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to the extent to which the resolution will protect the safety of the alleged victim and the entire school community), the informal disciplinary procedure will be concluded and the Complaint will be closed. If the parties are unable to reach a resolution, the formal resolution process outlined in Article V of this Policy will promptly commence.

(vii) Privacy and Disclosure. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the informal resolution process is not open to the general public. Accordingly, documents prepared in anticipation of the mediation (including the Investigative Report and the notice of the mediation) and other information introduced at the mediation may

not be disclosed outside of the mediation, except as may be required or authorized by law.

- (c) **Documentation.** The College will retain any documentation of the mediation for at least seven years.

EXHIBIT A
SEXUAL MISCONDUCT POLICY AND
PROCEDURES

Suggested Actions for Victims of Sexual Assault

While all types of Sexual Misconduct are inappropriate and taken seriously by the University, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the victim of a Sexual Assault, the University's first priority is to help you take steps to address your safety, medical needs and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue criminal or University disciplinary charges.

1. Ensure Your Physical Safety.

You may seek help from **local law enforcement agencies** or by contacting the **Campus Police and Public Safety Department**. The Campus Police Department can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Security personnel are on duty at the Campus Police Department 24 hours a day, seven days a week.

2. Seek Medical Assistance and Treatment.

Local options for medical care include any of the **Novant Health Medical Centers or Carolinas Medical Centers**. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs).

Employees at the Student Health Services can help you contact a support person, such as a family member, a friend or roommate.

If you choose to have an evidence collection kit (or "rape kit") completed, it is important to do so within 72 hours. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and /or filing criminal charges at a later date.

**Important
Contact
Information**

University Resources

Livingstone College's **Title IX Coordinator** is Mark Sanders located in the Hood Building. LC's **Deputy Title IX Program Coordinator**, is Te'Asia Gist located in Goler Hall. Ms. Gist may be contacted from 8:00 a.m. to 5:00 p.m. Monday through Friday by phone at (704) 216-6820 or by email at tgist@Livingstone.edu

The **Campus Police and Public Safety Department** is located in the Robinson Health Center and can be contacted by phone at 704-216-6164. Campus Security Officers are available 24/7.

The **Office of Student Health Services** is located in the Robinson Health Center and is available by phone at 704-216-6111. The office is staffed from 8:00 a.m. until 5:00 p.m. Monday through Friday.

The **Office of Student Affairs** is located in the Walls Center and is available by phone at 704-216-6185. The office is staffed from 8:00 a.m. until 5:00 p.m. Monday through Friday.

The **Office of Human Resources** is located in Hood Building and is available by phone at 704-216-6860. The office is staffed from 8:00 a.m. until 5:00 p.m. Monday through Friday.

The **College Office of Counseling Services** is located on the second Floor of the Walls Center and is available by phone at 704-216-6100. The Center is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday.

Community Resources

Local Law Enforcement Agencies can be reached by calling 911.

Rowan Regional Medical Center is located at 612 Mocksville Ave, Salisbury, NC 28144. The Emergency Department can be reached at 704-210-5000.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

3. Obtain Emotional Support

The Livingstone College Office of Counseling Services can help victims sort through their feelings and begin the recovery process. The professionals at the Office of Counseling Services are trained to provide crisis intervention on short-term and emergency issues. The Office of Counseling Services can also provide referral services for outside providers and law enforcement. Counseling is free of charge to all Students. In some instances, the law may require the disclosure of information shared by Students with counselors. However, absent a legal mandate to the contrary, counseling services are strictly confidential, are not part of Students' College records, and will not be reported to other College personnel.

4. Obtain Information / Report Misconduct

You are encouraged to report incidents of Sexual Assault to the College's Title IX Coordinator or other designated College individuals or offices as outlined in the Sexual Misconduct Policy and Procedures (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the Livingstone College Sexual Misconduct Policy and Procedures. College personnel can help you access resources and can provide you with support and information, including information on the College's procedures for investigating and addressing instances of Sexual Assault.

EXHIBIT B

SEXUAL MISCONDUCT POLICY AND PROCEDURES

Definitions

- (i) **Actionable Sexual Misconduct.** Actionable Sexual Misconduct” is Sexual Misconduct that, taking into account the totality of the circumstances, is sufficiently serious and significant to warrant adjudication under, and discipline pursuant to, this Policy. Specifically, to determine whether Sexual Misconduct rises to the level of Actionable Sexual Misconduct, consideration will be given to the following criteria: (1) the type, frequency and duration of the conduct (the more severe the conduct, the less the need to show a repetitive series of incidents, particularly if the harassment is physical), (2) the identity of and relationship between the alleged harasser and the alleged victim, (3) the number of individuals involved, (4) the age and sex of the alleged harasser and the alleged victim, (5) the location of the incidents and the context in which they occurred, and (6) whether there have been similar incidents.
- (ii) **Assigned Title IX Coordinator.** The “Assigned Title IX Coordinator” means either the Title IX Coordinator or the individual assigned by the Title IX Coordinator or President to handle a given Complaint, as outlined above.
- (iii) **Clery Act.** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.
- (iv) **Complainant.** A “Complainant” is an alleged victim of Sexual Misconduct who chooses to file a Complaint and participate in the College’s investigation and resolution of the alleged Sexual Misconduct.
- (v) **Complaint.** A “Complaint” is an allegation of Sexual Misconduct asserted against another party and reported to or filed with the College.
- (vi) **Consent.** “Consent” is informed, freely and actively given and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time.

Consent cannot be inferred from:

- 1) Silence, passivity, or lack of resistance alone;
- 2) A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
- 3) Attire;
- 4) The buying of dinner or the spending of money on a date; or

- 5) Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

- a) Minors, even if the other participant did not know the minor's age.
- b) Mentally disabled persons, if their disability was reasonable knowable to a sexual partner who is not mentally disabled.
- c) Persons who are incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

(vii) Dating Violence. "Dating Violence" means violence committed by a person

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

(viii) Day. A "day" is a business day, unless otherwise specified.

(ix) Domestic Violence. "Domestic Violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of North Carolina, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of North Carolina.

(x) FERPA. The Family Educational Rights and Privacy Act ("FERPA") is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

(xi) Sexual Misconduct Panel. "Sexual Misconduct Panel" is defined in Section V of the Sexual Misconduct Policy. The Sexual Misconduct Panel will receive regular training on (1) issues

related to Sexual Misconduct, and (2) how to conduct a decision making process that protects the safety of victims and promotes accountability.

- (xii) Investigator.** The “Investigator” is a neutral fact-finder who is designated by the Assigned Title IX Coordinator to investigate a Complaint. The Investigator will be trained regularly on (1) reasonable and appropriate investigative techniques, (2) issues related to Sexual Misconduct, and (3) how to conduct an investigation that protects the safety of victims and promotes accountability.
- (xiii) Personally Identifiable Information.** Personally Identifiable Information (as that term is defined by FERPA) includes, but is not limited to
- 1) a Student's name;
 - 2) the name of a Student's parent(s) or other family members;
 - 3) the address of a Student or a Student's family;
 - 4) a personal identifier, such as a Student's social security number, student number, or biometric record;
 - 5) other indirect identifiers, such as a Student's date of birth, place of birth, or mother's maiden name;
 - 6) other information that, alone or in combination, is linked or linkable to a specific Student and that would allow a reasonable person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
 - 7) Information requested by a person whom the College reasonably believes knows the identity of the Student to whom the education record relates.
- (xiv) Rape.** “Rape” is the act of sexual intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without Consent, including vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).
- (xv) Respondent.** A “Respondent” is an individual who has been accused of committing Sexual Misconduct by the report or filing of a formal or informal Complaint.
- (xvi) Responsible Employees.** The College’s “Responsible Employees” are all College employees not designated by the Sexual Misconduct Policy as Strictly Confidential Resources.
- (xvii) Retaliation.** “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.
- (xviii) Sexual Assault.** “Sexual Assault” means any actual, attempted or threatened sexual act with another person without that person’s Consent. Sexual Assault includes but is not limited to:
- 1) Rape and attempted Rape;
 - 2) Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective Consent, of a person’s breasts, buttocks, groin, or genitals (or clothing covering such

areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive;

- 3) Any sexual act in which there is force, violence, or use of duress or deception upon the victim;
 - 4) Any sexual act perpetrated when the victim is unable to give Consent; and
 - 5) Sexual intimidation, which includes but is not limited to:
 - a) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent,
 - b) Stalking or cyber-stalking, and
 - c) Engaging in indecent exposure.
- (xix) Sexual Exploitation.** “Sexual Exploitation” means any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:
- 1) Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such person;
 - 2) Prostituting another person (i.e., personally gaining money, privilege or power from the sexual activities of another);
 - 3) Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
 - 4) Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
 - 5) Voyeurism; and
 - 6) Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.
- (xx) Sexual Harassment.** “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic or physical conduct of a sexual nature. Examples of Sexual Harassment include instances in which:
- 1) Submission or consent to the behavior is reasonably believed to carry consequences for the individual’s education, employment, on-campus living environment, or participation in a College activity. Examples of this type of sexual harassment include:
 - a) pressuring an individual to engage in sexual behavior for some educational or employment benefit, or
 - b) making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.
 - 2) The behavior is so severe or pervasive that it has the effect of substantially interfering with the individual’s work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a College activity. Examples of this type of sexual harassment include:
 - a) one or more instances of Sexual Assault;
 - b) persistent unwelcome efforts to develop a romantic or sexual relationship;

- c) unwelcome sexual advances or requests for sexual favors;
- d) unwelcome commentary about an individual's body or sexual activities;
- e) repeated and unwelcome sexually-oriented teasing, joking, or flirting; and
- f) verbal abuse of a sexual nature.

Sexual harassment also includes acts of intimidation, bullying, aggression or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

(xxi) Sexual Misconduct. “Sexual Misconduct” means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The College encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:

- 1) Dating Violence;
- 2) Domestic Violence;
- 3) Non-forcible sex acts, which are unlawful sexual acts where Consent is not relevant, such as sexual contact with an individual under the statutory age of Consent, as defined by State law, or between persons who are related to each other within degrees wherein marriage is prohibited by law;
- 4) Sexual Assault;
- 5) Sexual Exploitation;
- 6) Sexual Harassment; and
- 7) Stalking.

(xxii) Stalking. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

(xxiii) Student. A “Student” is any student who is registered at the College or enrolled at the College (a) at the time of the alleged Sexual Misconduct *and* (b) at the time a Complaint is filed.

(xxiv) Title IX Coordinator. The College’s “Title IX Coordinator” is Mark Sanders, whose office is located in the Hood Building and who may be contacted by phone at 704-216- 6080 or by email at msanders@livingstone.edu. The Title IX Coordinator has ultimate oversight responsibility for handling Title IX–related complaints and for identifying and addressing any patterns or systemic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or College processes, incidents, patterns or problems related to Sexual Misconduct on campus or in Campus programs. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator or other designated College individuals or offices as outlined in the Sexual Misconduct Policy and Procedures.

