# Sexual Misconduct and Title IX Policy and Procedures

ROANOKE COLLEGE

Revised April 2026

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**ROANOKE COLLEGE**

**SEXUAL MISCONDUCT and TITLE IX 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 prohibited under this Policy, you are strongly encouraged to consult Exhibit A to this Policy and to seek immediate assistance from one or more of the Supportive Measures listed therein.

## ARTICLE I. INTRODUCTION

### A. Notice of Nondiscrimination

As a recipient of federal funds, Roanoke College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX") and its implementing regulations (34 CFR Part 106), which prohibit discrimination on the basis of sex in educational programs or activities, admission, and employment. Under certain circumstances, Sexual Misconduct (as defined in Exhibit B) constitutes Sexual Harassment (defined below) which is a form of sex discrimination prohibited by Title IX. Inquiries concerning Title IX may be referred to Roanoke College's Title IX Coordinator or to the U.S. Department of Education's Assistant Secretary in charge of the Office for Civil Rights, or both.

Roanoke College's Title IX Coordinator is Ashlee Williams, may be contacted from 8:00 a.m. to 4:30 p.m. Monday through Friday by email at akwilliams@roanoke.edu.

The College will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all applicants for admission and employment, students, faculty,

employees, and other members of the College community.

## B. Overview of This Policy

As an important aspect of fulfilling its mission, Roanoke College (the "College") is committed to maintaining and strengthening an environment founded on civility and respect. The College is committed to providing an educational environment, programs and activities, and to making decisions about admissions and employment free from sex discrimination. The College also is committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct, a timely response to such reports, and a prompt and equitable resolution of reports of Sexual Misconduct whether or not they result in a Complaint. In furtherance of this commitment, this Policy sets forth available resources and Supportive Measures (described in more detail in Exhibit A) which are available even if no Complaint is filed; describes prohibited conduct (Article II); establishes procedures for the timely responding to reports of Sexual Misconduct and Complaints of Sexual Harassment (Articles III-VI), which are consistent with all applicable federal laws including Title IX regulations, 34 CFR Part 106 (effective August 14, 2020), and Virginia Law, Va. Code §§ 23.1-806 to 23.1-808.

Title IX requires the College to respond when it has Actual Knowledge of an incident constituting Sexual Harassment that occurs against a person in the United States and that occurs in connection to an Education Program or Activity of the College. Since the definition of Sexual Harassment is central to this Policy and the application of the Grievance Procedures set forth in Articles IV - VI below, please see the next section for a discussion of how this term is defined by Title IX and its implementing regulations.

As further discussed in the Definitions below, some Sexual Misconduct may not meet the Title IX definition of Sexual Harassment, but will otherwise violate provisions of the College's Code of

Conduct or its policies and procedures. In those instances, when Title IX is found not to apply to alleged misconduct, the College retains the right to address such misconduct through the other policies and procedures of the College, whether the individual who is accused of this misconduct is a student, faculty, or staff member.

## C. Definitions

Capitalized terms used in this Policy which are not listed below or defined within the Policy, shall have the meanings set forth in Exhibit B. For ease of reference a few key terms are defined here:

**(i)** **"Complainant"** means an individual who is alleged to be the victim of conduct that would constitute Sexual Misconduct, whether they are the person who reports the incident or files a Complaint.

**(ii)** **"Complaint"** means a written document signed by the Complainant or the Title IX Coordinator alleging conduct that if proven would constitute Sexual Harassment, and contains a request for the College to investigate the allegation(s).

**(iii)** **"Respondent"** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**(iv)** **"Responsible Employee"** means an employee of the College who does not work in the College's offices designated as "Strictly Confidential Resources."

**(v)** **"Sexual Harassment"** as defined by Title IX and its implementing regulations means alleged conduct on the basis of sex that satisfies one or more of the following:

(1) Unwelcomed conduct that constitutes "Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as those terms are defined by federal law and as set forth in Exhibit B.

(2) Unwelcomed conduct that conditions the providing of any assistance, benefit or service of the College on the other person's participation in unwelcomed sexual conduct (a *quid pro quo* arrangement between an employee and student).

(3) Unwelcomed conduct determined to be so severe, pervasive and objectively offensive from the perspective of a reasonable person that it effectively denies a person equal access to an Education Program and/or Activity of the College.

No evaluation of the severity, pervasiveness, and offensiveness of the unwelcomed conduct and no separate finding of a denial of equal access is required when the College receives a report of alleged Sexual Misconduct that falls with points 1 or 2, as those elements are presumed from the nature of those allegations.

There are several limits to this Title IX definition. First, the alleged incident(s) of alleged Sexual Harassment must have occurred in the United States. Second, the incident(s) of alleged Sexual Harassment must occur in connection with an Educational Program or Activity of the College. The College's obligation under Title IX to respond to reported incidents of alleged Sexual Harassment that occur off campus is limited and extends to the three (3) following situations:

(1) The incident occurs as part of the College's operations;

(2) The College exercises substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or

(3) The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by the College.

If the allegations made in the Complaint are not covered by the Title IX definition of Sexual Harassment, the Complaint or certain of its allegations may be dismissed (See Article IV(B)(i) below). In those circumstances where Title IX is determined not to apply, the College may, to the extent feasible or practicable, continue to investigate such allegations and address misconduct found to exist through its Student Code of Conduct, Faculty Handbook and/or Staff Handbook as may be applicable.

**(vi)** **"Strictly Confidential Resources"** are all College employees who work in or for either the Office of Student Health & Counseling Services or the Office of Chaplain of the College.

**D. Applicability of This Policy**

This Policy applies to all aspects of Title IX compliance at the College and covers any allegations of Sexual Harassment made by or against a student, faculty member, or employee of the College, or a third party. The College's disciplinary authority, however, may not extend to third parties who are not students or employees of the College. Allegations of Sexual Misconduct which occur a significant distance from the Campus may be more difficult for the College to investigate.

The Policy, and the Grievance Procedures set forth in Articles IV and VI, below by which a determination will be made regarding responsibility of allegations of Sexual Harassment in a Complaint are the exclusive Policy and procedures to be used by the College to respond to a complaint of sex discrimination or harassment under Title IX regardless of the status of the Complainant or Respondent. As such, this Policy and its Grievance Process supersedes and replaces any and all policies or procedures that may exist in the Student Handbook, Faculty Handbook, or Staff Handbook if they may have otherwise related to Title IX.

The College's obligations to comply with Title IX and this Policy is not obviated or alleviated by FERPA, 20 U.S.C. § 1232g or its implementing regulations, 34 CFR Part 99. Further, nothing in this Policy shall be construed in derogation of any rights any individual may have under Title VII of the Civil Rights Act of 1964, as amended, or any of its implemented regulations.

### E. Period of Limitations

All persons with knowledge of conduct or an incident that may constitute any form of Sexual Misconduct involving a member of the College community or occurring on the College's campus are encouraged to report the Sexual Misconduct, regardless of the length of time between the alleged incident and the decision to report it. However, the College strongly encourages individuals to report Sexual Misconduct and to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation and the ability to remedy otherwise actionable Sexual Harassment, particularly if neither the Complainant nor the Respondent is enrolled as a student or employed by the College when the Complaint is filed or before a determination of responsibility is made.

## ARTICLE II. STATEMENTS OF POLICY

### A. Prohibition on Sexual Misconduct

This Policy is designed to protect the rights of all members of the College community and to promote and further a safe environment where the College's Education Programs and/or Activities are provided free from sex discrimination. All members of the College have a responsibility to support and assist with the College in fostering and maintaining this environment.

The College strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to making a timely response and a prompt and equitable resolution of reports of Sexual

Misconduct. To that end, the College has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the College will timely respond to all allegations of Sexual Misconduct, regardless whether a Complaint is filed, or whether Title IX is found to apply. In this regard, the College will provide, as may be appropriate, Supportive Measures to a Complainant even if a Complaint is not filed or the Sexual Misconduct does not constitute Sexual Harassment under Title IX. See Exhibit A.

In circumstances where the reported Sexual Misconduct does not constitute Sexual Harassment that can be addressed under Title IX, but constitutes other forms of misconduct prohibited by other College policies and procedures, including the Code of Conduct for students, faculty and/or staff, the College reserves the right to investigate and adjudicate those acts of misconduct under other policies and procedures and to impose disciplinary action, if found appropriate.

### B. Prohibition on Retaliation

Retaliation against any person for filing, supporting, or providing information in good faith in connection with either a report of Sexual Misconduct or a Complaint, or for refusing to participate in an investigation or hearing, is prohibited. For example, no disciplinary action under the Student Code of Conduct shall be taken or threatened in order to compel witnesses or others to participate in an investigation, or a hearing conducted pursuant to this Policy. Complaints of Retaliation will be addressed through the College's other disciplinary procedures, as deemed appropriate. Any person who has experienced acts or conduct that constitute Retaliation should make a prompt report to the Title IX Coordinator, or to a Divisional Leader if the Complaint of Retaliation involves the Title IX Coordinator.

### C. Prohibition on Providing False Information

Any individual who knowingly files a false report or Complaint under this Policy or who knowingly

makes a materially false statement in bad faith in the course of proceedings under this Policy may be subject to disciplinary action. However, a determination regarding responsibility alone is not sufficient to conclude that any person made a materially false statement in bad faith.

## D. Equitable Treatment

Upon receipt of a report of Sexual Misconduct, the College will treat the Complainant and Respondent(s) equitably by offering Supportive Measures and by following the Grievance Procedures (as outlined in Article IV - VI below), if a Complaint is filed, before imposing disciplinary sanctions or taking other actions which do not constitute Supportive Measures toward the Respondent. Supportive Measures will be made available to a Complainant, whether or not a Complaint is filed.

## E. Confidentiality

**(i) Standard of Confidentiality (Applicable to all reports)** The College will respect and will make every feasible effort to preserve the confidentiality of the information shared by and the identities of the individual who made the report of Sexual Misconduct, any Complainant, any person reported to be a perpetrator of Sexual Misconduct, any Respondent, and any witness, except as may be permitted by FERPA. However, nothing shall prevent the Title IX Coordinator or other designee from disclosing or using the information as permitted by Title IX and its implementing regulations.

In keeping with the respect for confidentiality (and except as required as set forth below), information regarding alleged Sexual Misconduct will generally be disclosed by College personnel only as follows:

**(1)** The College's Responsible Employees will (and are obligated to) report information

regarding alleged Sexual Misconduct to the Title IX Coordinator.

**(2)** 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.

**(3)** College personnel, as set forth in Article II(F), may be required by state law to report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.

**(4)** College personnel will share information regarding alleged Sexual Misconduct, as required by law or to comply with Title IX and its regulations, including the sharing of information required under this Policy, as well as to prevent the reoccurrence or to address Sexual Misconduct which is found to have occurred.

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

**(ii) Strict and Heightened Confidentiality**

**(1) Strict Confidentiality.** Individuals may discuss alleged Sexual Misconduct in strict confidence with College employees who work in or for the following offices ("Strictly Confidential Resources"):

**(a)** Student Health & Counseling Services, and

**(b)** Chaplain's office.

**(c)** Professional Athletic Trainers

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 considered to be Responsible Employees. Communications made to Responsible Employees (and others) 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 a Responsible Employee, the Responsible Employee (except in limited circumstances) (See Article III(B)(iii)) is obligated to report that information to the College's Title IX Coordinator or a Deputy Title IX Coordinator. If the Complainant to whom the reported information pertains desires that the Title IX Coordinator not share the information with the Respondent or with others, even as appropriate and necessary to address the allegations, such

individual must expressly request that the College apply heightened confidentiality to such information. This request must be made to the Title IX Coordinator and documented in writing.

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. 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 Title IX Coordinator may conduct a preliminary investigation into the allegations and will weigh requests for heightened confidentiality against the following factors:

**(a)** The nature and seriousness of the alleged Sexual Misconduct, including whether the allegations include physical acts of violence;

**(b)** the Complainant's age;

**(c)** whether there have been other reports of Sexual Misconduct or Complaints filed against the Respondent;

**(d)** the Respondent's right to receive information about the allegations if the information is maintained by the College as an "education record" under FERPA; and

**(e)** the applicability of any laws mandating disclosure.

The Title IX Coordinator will inform the person requesting heightened confidentiality of the College's limitations on maintaining heightened confidentiality

and whether the College must make a disclosure under Article II(F), below to the Review Team, and what other actions, if any, the College intends to pursue in regardless 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 provide appropriate Supportive Measures to the Complainant, so long as they do not constitute unreasonable burden or constitute disciplinary or punitive measures toward the Respondent.

**(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, information regarding the alleged Sexual Misconduct may be used and reported anonymously for data collection purposes under the Clery Act.

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

**F. Review Committee Assessment**

When the Title IX Coordinator or Deputy Title IX Coordinator receives a report of Sexual

Misconduct that includes an alleged physical act of sexual violence against a student, then in order to comply with state law, a meeting of the College's Review Committee shall be convened within 72 hours to review and consider all available information.

**(i)** The Review Committee consists of the Title IX Coordinator or designee and a representative from both the College's Campus Security Department and Student Affairs. The purpose of the meeting is for the Review Committee to determine whether a disclosure needs to be made to protect the health and safety of the student directly affected and others on campus.

**(ii)** If the allegations received would constitute a felony sexual assault under state law, the Campus Security representative shall notify the other members, and within 24 hours either Campus Security, or another member of the Review Committee, shall consult with the local Commonwealth Attorney with jurisdiction to prosecute the alleged acts of sexual violence, but shall do so without disclosing the student's personally identifying information, unless specifically requested by Complainant.

**(iii)** If the Review Committee determines from all available information that a disclosure is necessary to protect the health and safety of the student and others, then the Campus Safety representative shall disclose all known information to the other members of Campus Safety Department, and as appropriate, to the local police department. This disclosure shall include the personally identifying information of those students known and/or reasonably believed to be involved. The Title IX Coordinator or designee shall promptly notify the student that this safety disclosure was made.

### G. Requests Not to Investigate and Refusals to File a Complaint or to Cooperate

In all circumstances, a Complainant has the right (i) to request that the College not investigate the

information or allegation(s) reported, (ii) to refuse to file a Complaint, and/or (iii) to refuse to cooperate in the investigation and/or resolution of allegation(s). 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, which will involve offering Supportive Measures.

The College will respect and take such requests and decisions seriously; however, such requests and decisions may limit the College's ability to investigate and take reasonable action in the absence of or 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 Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and will weigh such requests and decisions against the same factors utilized when initially considering a request for Heightened Confidentiality (Article II(E)(ii)(2)):

The Title IX Coordinator will inform the Complainant in writing of the College's response to such a request or decision. If the Title IX Coordinator intends to file a Complaint, pursue an investigation and/or resolution hearing regardless of the Complainant's request or refusal, the notice will include a short statement of the factors relied upon.

Even if the College cannot take disciplinary action against the Respondent because of a Complainant's refusal to file a Complaint or a refusal to participate in the investigation and/or a hearing held to resolve the allegations, the College, to the extent practicable and appropriate, will provide Supportive Measures to the Complainant, take steps 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 measures to ensure the Complainant's safety, so long as such actions do

not unfairly burden and are not punitive or disciplinary in nature toward the Respondent.

### H. Limited Immunity

While the College does not condone underage drinking or the use of illegal drugs, it does seek to encourage timely, good faith reporting of Sexual Misconduct. To foster timely and good faith reporting and to comply with state law, the College shall extend limited immunity from disciplinary action for the personal consumption of drugs or alcohol when such misconduct is disclosed in conjunction with a good faith reporting of conduct constituting Sexual Misconduct. This limited immunity shall apply to Complainants, witnesses, and others who are reporting incidents of Sexual Misconduct or assisting the Complainant. In limited circumstances, this immunity may also be extended to a Respondent.

### I. 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 this Policy. Requests for accommodations must be made to Dustin Persinger in the College's Office of Accessible Education Services (located at 221 College Lane and available by phone at 540-375-2247).

## ARTICLE III

## HOW AND WHERE TO REPORT 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 attached to this Policy.*

Because Sexual Misconduct may in some instances constitute both a violation of College policy and

criminal activity, and because the College Grievance Process is not a substitute for instituting legal action, **the College encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate.**

Individuals may, however, choose not to report alleged Sexual Misconduct to campus officials and/or law enforcement authorities. The College respects and supports the individual's decision with respect to reporting; nevertheless, as noted above, once the College has knowledge of Sexual Misconduct, it may determine it is required to notify appropriate law enforcement authorities based on the nature of the allegations at issue.

**A. Reporting to Local Law Enforcement:**

Individuals may file a complaint directly with local law enforcement agencies (e.g. the Salem Police Department) by dialing 911. Individuals may also contact any of the following College personnel for assistance in filing a complaint with local law enforcement:

**(i)** The College's Campus Safety Department, 24 hours a day, seven (7) days a week (available by phone at 540-375-2310 and located in 9 North College Avenue),

**(ii)** The College's Title IX Coordinator, Ashlee Williams, from 8:30 a.m. to 5:00 p.m., Monday through Friday (available by email at akwilliams@roanoke.edu).

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or filing a Complaint with the College). Individuals who make a criminal complaint may also choose to file a Complaint, but are not required to do so.

If the individual reports to law enforcement with the involvement of Campus Safety, Campus Safety

will be obligated to report that information to the Title IX Coordinator. A criminal investigation into the matter does not exempt the College from conducting its own investigation. 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 supportive measures when necessary to protect the Complainant and/or the College community which do not adversely impact the Respondent.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether prohibited Sexual Harassment under Title IX has occurred, or whether other prohibited misconduct in violation of the College's applicable Code of Conduct has occurred.

**B. Reporting to the College**:

Any person, including visitors, may make a report of Sexual Misconduct; it need not be the Complainant. A report can be made by any means: in person, by phone, by mail or email, or even anonymously. The College respects and supports a Complainant's decision with respect to reporting; however, once the College obtains Actual Knowledge of a report of Sexual Misconduct it must and will respond in a timely manner.

**(i)** **To Whom**. Anyone wishing to report an incident of Sexual Misconduct under this Policy should contact one of the following individuals or offices:

**(1)** **Title IX Coordinator.** The College's Title IX Coordinator is Ashlee Williams, who may be contacted during business hours by email at akwilliams@roanoke.edu. In addition to overseeing the prompt, fair, and impartial investigation and resolution of all Complaints filed

with the College. The Title IX Coordinator will be responsible for overseeing the implementation of Supportive Measures, See Exhibit A.

**(2) Deputy Title IX Coordinators, (Also known as the "designee").** The College's Deputy Title IX Coordinators are Amy Perkins and Michele Vineyard.

**(a)** Michele Vineyard serves as a Deputy Title IX Coordinator as well as the Senior Director for Human Resources. Her office is in Room 210 of College Hall, and she may be contacted during business hours by phone at 540.375.2262, or by email at vineyard@roanoke.edu.

**(b)** Amy Perkins serves as the Dean of Students. Her office is located in Room 210 of Alumni Gym, and she may be contacted during business hours by phone at 540.375.2592, or email at perkins@roanoke.edu.

**(3) Roanoke College's Campus Safety Department.** The College's Campus Safety Department is located at 9 North College Avenue. The Campus Safety Department is also available by phone at 540-375-2310. The Campus Safety Department is available 24 hours a day, seven (7) days a week. If an employee of the College's Campus Safety Department receives a report of alleged Sexual Misconduct, that employee must notify the College's Title IX Coordinator or a Deputy Title IX Coordinator within two (2) days.

***If any of the parties designated above is the Respondent or is otherwise at issue in the alleged misconduct, or if an individual is otherwise uncomfortable reporting to or making a Complaint to one or more of the parties listed above, he or she may report the alleged Sexual Misconduct to any other party or office listed above.***

**(ii) Anonymous Reports.** Anonymous reports of sexual misconduct can be submitted in writing to any of the Title IX Coordinators listed above or through the Campus Safety Website's Anonymous Silent Witness Form www.roanoke.edu/safety . The level of detail or identifying information regarding the alleged misconduct will determine the College's ability to respond to the report and thoroughly investigate the matter. Anonymous reports trigger Clery Act responsibilities.

**(iii) Mandated Reporters.** Except as noted below, any Mandated Reporter who obtains information that either a student attending the College, or another individual, while on Campus or in a Non-campus Building or Property, or while on Public Property, may have been the victim of a physical sexual act against that person's will or where that person was incapable of giving consent, shall report such information to the Title IX Coordinator, a Deputy Title IX Coordinator, or Campus Safety as soon as possible after addressing the immediate needs of the person assaulted.

A Mandated Reporter is not required to make a report if (a) the information was obtained through a communication considered privileged under state or federal law, and/or (b) the information was obtained in the course of providing services as a licensed healthcare professional, an employee providing administrative support for healthcare professionals, or while serving as a campus victim support person, as an accredited rape crisis or domestic violence counselor, a member of the clergy or an attorney who is not an employee of Roanoke College. Likewise, there is no duty to make a report if the Responsible Employee has actual knowledge that the same matter has already been reported to the Title IX Coordinator, to law enforcement for investigation, or to the Commonwealth Attorney's office.

**No employee is authorized to investigate or resolve Complaints without the**

**involvement of the College's Title IX Coordinator or a Deputy Title IX Coordinator, or to engage in actions not authorized by this Policy.**

### C. Initial Meeting with Complainant after Report

As soon as is practicable after receipt of a report of Sexual Misconduct, either the Title IX Coordinator or designee will contact the Complainant (if the person is identified) to schedule an initial meeting. If the Complainant is not the person who reported the alleged Sexual Misconduct, the Assigned Title IX Coordinator will attempt to meet as soon as possible with the person who made the report to gather information from that person. In arranging the initial meeting, the Complainant will be advised of the right to be accompanied by an advisor, if desired.

**(i)** During this initial meeting with the Complainant, the Title IX Coordinator or designee will, as applicable:

**(1)** Discuss the broad range of Supportive Measures available and that these services are available even if she/he/they decides not to file a Complaint. Among the measures to be mentioned are possible mutual no contact restrictions, campus escort services, changes in work or housing locations, increased security or monitoring, counseling, academic extensions or other assistance, etc. Considering the circumstances or Complainant's wishes, an immediate referral to the Counseling Center or other resources may be appropriate;

**(2)** Discuss concerns for physical safety, if any, for Complainant and others;

**(3)** Discuss confidentiality standards and any concerns with the Complainant;

**(4)** Explain avenues for a resolution by filing a Complaint, and the availability of the Grievance Process and the Informal Resolution Process (mediation) instead of

going to a Hearing;

**(5)** Explain the Grievance Procedures, the steps involved in an investigation, and the Grievance Process;

**(6)** Discuss Retaliation protection and reporting; and

**(7)** Provide a copy of the Policy and a separate copy of the Sexual Misconduct Complaint Form (attached to this Policy as Exhibit C). If appropriate under the circumstances, inquire if the Complainant has already decided whether she/he/they wishes to file a Complaint, or if additional time is needed to consider whether to initiate this formal process.

**(ii)** Following this initial meeting, Title IX Coordinator or designee will, if applicable, promptly take steps needed to provide Supportive Measures requested, and shall follow-up as needed with the Complainant and engage in an interactive process over time to determine what additional Supportive Measures may be requested and are appropriate. In discussing Supportive Measures, it is important to explain that these measures are non-disciplinary, non-punitive in nature and are designed to restore or preserve equal access to the College's Education Programs and Activities without unreasonably burdening the Respondent, but will also provide for the safety of the Complainant and others. Once a decision is made on which Supportive Measures will be provided to the Complainant, the determinations will be communicated promptly in writing to the Complainant.

**(iii)** If no Supportive Measures are requested by the Complainant or if certain actions requested are not provided, the Title IX Coordinator or designee shall document why certain measures (if requested) were not provided, and document what measures were offered to the Complainant. If changes occur subsequently and additional measures are

extended, the reasons including additional facts, if any, obtained should be documented.

**(iv)** The Title IX Coordinator or designee may meet and/or communicate with the Complainant as often as may be needed to respond to questions and to ensure the Complainant understands the requirements and options available under this Policy and otherwise prior to the filing of a Complaint.

**D. Filing a Complaint with the College**

There is no requirement for a Complaint to be filed. However, the filing of a signed Complaint is a requirement to initiate either the Grievance Procedures and Process (investigation and hearing) (Articles IV and V), or to gain access to the College's Informal Resolution Process (Article VI). In order to file a Complaint, the Complainant must be participating in, or attempting to participate in an Education Program or Activity of the College, or be employed by, or attempting to secure employment.

**(i)** The College has provided a sample Complaint form (Exhibit C) for use. However, any document signed by a Complainant and filed with the Title IX Coordinator alleging Sexual Harassment that requests the College investigate the allegations will suffice.

**(ii)** If Exhibit C is not used, a document will be considered to be a Complaint under this Policy only if it meets all of the following required elements, but it does not need to be labeled as a "Complaint:"

**(1)** The document must allege conduct that meets the definition of Sexual Harassment and, if known, the identity of the Respondent.

**(2)** The alleged conduct must have occurred on Campus, within an Education Program or Activity, or in a building owned or controlled by a student organization that is officially recognized by the College.

**(3)** The conduct must have occurred within the United States.

**(4)** The Complainant must provide a physical or digital signature on the document indicating she/he/they is filing a Complaint, and requesting the College to investigate.

**(5)** The identity of the Respondent is not a requirement for the filing of the Complaint. Ultimately, if the Respondent cannot be identified through an investigation, the Complaint may be dismissed.

**(iii)** The Title IX Coordinator may also elect to submit and sign a Complaint, but only after taking into account the Complainant's wishes. In determining whether to exercise discretion to sign a Complaint on the behalf of the College, the Title IX Coordinator shall consider whether the alleged acts of Sexual Harassment involves violence, threats, the use of weapons or serial predation.

**ARTICLE IV.**

**GRIEVANCE ROCEDURES APPLICABLE TO ALL COMPLAINTS**

**A. Overview**

**(i)** **Oversight.** The Title IX Coordinator or designee is responsible for overseeing the timely response to a report of Sexual Misconduct and the prompt, and equitable resolution of Complaints filed with the College, including the Grievance Procedures and Process

(Articles IV and V) and the Informal Resolution Process (Article VI). Upon filing a Complaint, the Title IX Coordinator or Deputy Title IX Coordinator will become the point of contact, however, the Title IX Coordinator maintains oversight of all procedural questions in collaboration with the designee assigned to the process.

**(ii) Impartiality and Training.** All individuals designated by the College to serve as a Title IX Coordinator, Deputy or Assigned Title IX Coordinator, an investigator, a decision-maker, or a mediator shall not have a conflict of interest, or a bias for or against Complainants or Respondents generally, or for or against either the individual Complainant or Respondent. All such participants in the College's grievance process will receive training on various required Title IX topics, and as well as the Policy, including without limitation how to serve impartially, avoiding prejudgment of the facts at issue, conflicts of interest and bias.

**(iii) Conflicts.** If any administrator who would normally be designated to oversee the Grievance Procedures and Policies or Informal Resolution Process is the Respondent (including, but not limited to, the Title IX Coordinator), then the President or General Counsel will appoint another College administrator to perform duties of this person under this Policy and the person appointed will not be someone who reports to the conflicted administrator.

**(iv) Title IX Advisors (Also known as the "Advisor" for this purpose).** The Complainant and Respondent may each be accompanied by a Title IX Advisor of their choice during any meeting or interview held pursuant to this Policy. The Advisor may be but is not required to be an attorney. ("Advisor") If a party intends to use an Advisor she or he will provide prompt advance notice to the Title IX Coordinator, assigned Deputy Title IX Coordinator, investigator(s) hearing officer and/or mediator as appropriate. The Advisor may consult with the person he or she is there to support, but may not interfere with any meeting or

interview conducted by an investigator by asking or answering questions or by making statements to the investigator. The Advisor, if involved, will have the opportunity to inspect and review evidence related to the allegations and to submit written comments to the Investigators prior to the completion of the Investigative Report. At a Hearing, if held, the Advisor shall be permitted to ask relevant questions and cross-examine the other party and all witnesses, including asking questions that may challenge credibility. All questions will be directed to the Hearing Facilitator and relayed to the parties. Advisors will be expected to maintain confidentiality regarding the matter as well as any and all communications received or exchanged pursuant to this Policy.

**(v) Presumptions & Objective Assessment.** In connection with all allegations of Sexual Misconduct, the College follows a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process or a separate proceeding held for other misconduct not involving Sexual Harassment. Likewise, the College requires all College representatives, Title IX Coordinator, Deputy Title IX Coordinators, investigators, Hearing Officer(s), Appellate Decisionmakers and Mediator to use an objective evaluation of all relevant evidence – inculpatory and exculpatory – and expects that credibility determinations will not be made solely based on a person's status as a Complainant, Respondent, witness, etc.

**(vi) Emergency Removal & Interim Action.** The College retains the right to remove a Respondent who is a student or non-student employee from participation in Education Programs and/or Activities on an emergency basis if after an individualized safety and risk analysis the Title IX Coordinator, in conjunction with Campus Safety, determines that an immediate threat to the physical health or safety of any student or other person arising

from the allegations justifies removal. Should the College exercise this right, it will provide the Respondent with written notice of its decision and will provide the student or non-student employee an opportunity to challenge the decision immediately following the removal. To challenge an Emergency Interim Action, an Objection must be filed, and will be considered an Appeal which is subject to and must comply with Article V(J) below. Exercising this right to appeal does not allow for Respondent's continued physical presence on campus, unless or until the decision is overturned or modified. Additionally, the College retains the right to place a non-student employee who is a Respondent on administrative leave (paid or without pay) pending the resolution of the Grievance Process set forth in Article V or the informal Resolution Process in Article VI, below.

**(vii) 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 **70 calendar days** from the receipt of the Complaint, absent extenuating circumstances.

Any party may request an extension of any deadline for Good Cause by submitting a written request for an extension to the Title IX Coordinator that includes reference to a specific duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadline contained in this Policy as necessary and for Good Cause shown.

## B. Dismissal of Complaint

The College will investigate all Complaints that it receives consistent with the provisions of Title IX. However, all Complaints when filed will be reviewed by the Title IX Coordinator and a determination will be made whether the Complaint is one that is subject to the Title IX and Grievance Process of this Policy, or is one that should be addressed otherwise, through Student Conduct proceedings for misconduct or through other similar procedures that apply to College employees. In certain circumstances, a Complaint must be dismissed for lack of jurisdiction and in other situations dismissal is discretionary as described below.

(i) **Mandatory Dismissal**. Under Title IX regulations the College is required to dismiss a Complaint of Sexual Harassment if any of the following circumstances exist:

(1) The Complainant is not a current student or employee, unless Title IX Coordinator brings the Complaint.

(2) The alleged conduct, even if proven, would not constitute Sexual Harassment as defined.

(3) The alleged conduct did not occur in or in connection with a College's Education Program and/or Activity.

(4) The alleged conduct did not occur in the United States.

(ii) **Discretionary Dismissal**. The Title IX Coordinator may choose to dismiss a Complaint or any allegations herein if, at any time, during the investigation or hearing:

(1) The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegation therein.

(2) The Respondent is no longer enrolled or employed by the College.

(3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Complaint or the allegations therein.

(iii) **Discretionary Considerations.** In exercising discretion, the Title IX Coordinator may elect to continue with an investigation even if the Complainant submits a written notice of withdrawal in those situations where (a) the information already obtained or available supports a finding that the Respondent may pose an ongoing risk to the College community, (b) the gathered evidence separate and apart from the Complainant's statements are sufficient to reach a determination regarding the Respondent's responsibility, or (c) a determination regarding responsibility will or may provide a benefit to the Complainant even though the College lacks control over the Respondent or would be unable to issue disciplinary sanctions for other reasons.

(iv) **Respondent Not Enrolled or Employee.** When a Respondent is no longer enrolled or employed, the Title IX Coordinator may choose to dismiss the Complaint if the College has no way to gather evidence sufficient to make a determination.[1]

(v) **Special Circumstances.** A discretionary dismissal is intended to apply to a narrow set of circumstances. The following circumstances may justify, but not require a discretionary decision to dismiss a Complaint: (a) the College is unable to discern the identity of the Complainant or Respondent; (b) the College is unable to gather evidence necessary to establish the elements of conduct which meets the Sexual Harassment definition, including whether the conduct was unwelcome or occurred without consent; (c) the

[1] It should be noted that if a student who is a Respondent withdraws from the College while under investigation for Sexual Misconduct, state law requires the College to make a notation on the student's transcript that s/he withdrew with allegations pending.

allegations in the Complaint are precisely the same as allegations the College has already investigated and adjudicated; (d) when the length of time elapsed between an incident of alleged Sexual Harassment and the filing of the Complaint prevents the College from collecting enough evidence to reach a determination; or (e) when a Complainant stops participating in the investigation, but has not sent a formal withdrawal request and the only evidence to suggest wrongful conduct occurred are statements made by the Complainant.

(vi) **Notice of Dismissal.** If the College dismisses a Complaint, the Title IX Coordinator will promptly send written notice of dismissal to both parties with an explanation of its reasons. As previously noted, in certain circumstances, dismissed charges will be referred for processing under the College's codes of conduct.

(vii) **Appeal.** Either party may appeal a dismissal decision. To file an Appeal the party must comply with the requirements set forth in section K below, which also sets forth the rights and procedures involved with the Appeal. The decision made on the Appeal will be the final decision on this issue by the College.

### C. The Appointment of the Investigator

Unless the entire Complaint is initially dismissed under Article IV(B) above, the Title IX Coordinator will promptly appoint one or more persons to serve as Investigator. The Investigator(s) names and contact information will be included in the Notice of Complaint sent to the Complainant and the Respondent. All individuals appointed to serve as Investigators will have completed all training required by the Title IX regulations and may be a College employee or a third party engaged for this purpose.

Within three (3) days of the Notice of Complaint being sent, either the Complainant or the

Respondent may file a written objection with the Title IX Coordinator for any real or perceived conflicts of interest or bias posed by assigned Investigators. The Title IX Coordinator will carefully consider such statements and if it is objectively determined that a material conflict of interest exists, a different individual(s) will be assigned to conduct the investigation. If no objection is filed in a timely manner, the party shall have waived any claim or objection of the basis of bias, conflict, or lack of impartiality.

**D. Initial Meeting with Respondent**

Once a Complaint is filed, and the Title IX Coordinator or designee has completed the initial reviews, an initial meeting will be scheduled with the Respondent. In arranging this initial meeting, the Title IX Coordinator or designee will advise the Respondent of the right to be accompanied by an advisor if desired. During the initial meeting with the Respondent, the Title IX Coordinator or designee will address the following as applicable:

**(i)** If the Notice of Complaint has not been sent, provide a general statement of the allegation consistent with federal and state and federal privacy laws and, if applicable, the Complainant's request for confidentiality, the name of the Complainant and advise the Respondent that a Notice of the Allegations will be sent which will provide the details;

**(ii)** Provide a copy of this Policy, and explain the College's Grievance Process for formal resolution and the availability of informal resolution (mediation) process, if both parties agree;

**(iii)** Discuss confidentiality standards and concerns with the Respondent;

**(iv)** Explain the Grievance Procedures, the steps involved in an investigation, and the Grievance Process;

**(v)** Discuss the availability of the Facilitated or Informal Resolution Process that utilizes mediation, if both parties agree;

**(vi)** Discuss Retaliation protections and reporting, and any concerns Respondent may have for Retaliation; and

**(vii)** Inform the Respondent of any Supportive Measures being provided to the Complainant that directly affect the Respondent (e.g., mutual no contact directive with other party).

**E. Notice of Complaint**

Within 3 days of receiving a filed Complaint the Title IX Coordinator or designee shall provide a written notice ("Notice") to both parties (provided the identity of the Respondent is known) of the allegations in the Complaint. This Notice shall contain the following information:

**(i)** The allegations constituting each instance of Sexual Harassment, including:

(1) The identity of the Complainant and the Respondent (if known);

(2) The date and location of the alleged incident or conduct (if known); and

(3) The details of the conduct constituting Sexual Harassment; Sexual Misconduct, etc.

**(ii)** The statement that the Respondent is presumed not responsible for the alleged misconduct and that a determination regarding responsibility will be made at the conclusion of the Grievance Process;

**(iii)** The College has adopted a Grievance Process and Procedures (investigation and hearing) (Articles IV and V) and also offers an Facilitated Resolution or Informal Resolution

Process (mediation) (Article VI) that is available if both parties agree. A copy of the College's Sexual Misconduct Policy will be provided;

**(iv)** The name(s) and contact information of the Investigator(s) appointed to investigate this Complaint, and the right to challenge for bias;

**(v)** The right of each party to have an advisor of their choice, who may be, but is not required to be an attorney;

**(vi)** Assurance that the initial interview of each party will be scheduled by the Investigator(s) or designee so as to afford a reasonable time to be prepared;

**(vii)** The timetable proposed for moving through the Grievance Process related to this Complaint.

**(viii)** A statement that if the investigation reveals new allegations not covered in this Notice, the information will be provided by the Title IX Coordinator, and this Notice may be amended to add the additional allegations, and this may impact the timetable;

**(ix)** The right of each party to submit evidence to the Investigator(s), and if applicable a deadline for doing so;

**(x)** The right of each party and their advisor, if any, to inspect and review all evidence related to allegation(s) collected by the Investigator(s) and to comment on the evidence before the Investigative Report is completed;

**(xi)** The right to receive a copy of the Investigative Report at least ten (10) days before the Hearing;

**(xii)** The right to challenge the impartiality or bias of the Hearing Officer;

**(xiii)** The right to have an advisor assigned to assist either party and to ask relevant questions of all witnesses including the opposing party at the hearing; and

**(xiv)** A reminder of the College's prohibition against knowingly making false statements or knowingly submitting false information during a Grievance Process.

## F. Consolidation of Complaints

The College reserves the right to consolidate Complaints where the Complaints arise out of the same factual circumstances or where there is more than one Complainant or Respondent, or where a cross-complaint is filed by a Respondent against a Complainant. If Complaints are consolidated, there will be a single investigation and hearing process. All parties will receive the same Investigative Report and the same written determination regarding responsibility although the determination of responsibility may be different with respect to each allegation depending on the facts. The written determination of responsibility will be provided simultaneously to all parties and will not be redacted.

In a case involving a cross-complaint, each party is entitled to the rights attached to being a Complainant, including the Respondent's right to request Supportive Measures that otherwise would be reserved only for the Complainant. Further, the rape shield provisions and other evidentiary exclusions will apply to the Respondent in her/him/them status as a Complainant on the cross-complaint. Likewise, there shall be no presumption that the initial Complaint takes priority over the cross-complaint.

## G. The Investigation and Investigative Report

**(i)** **Duty to Investigate.** Upon receipt of the Complaint and Notice, the Investigators will promptly begin a thorough search for relevant facts and evidence pertaining to the

allegations in the Complaint in order that a determination of responsibility can be reached while operating under various legal restraints, and the need to conclude the investigation with reasonable promptness without the power of subpoena. This may include taking the following steps:

(1) conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) to obtain relevant evidence and summarizing such interviews in written form;

(2) identifying and gathering relevant documents, including electronically stored information, if available;

(3) visiting, inspecting, and taking photographs at relevant sites;

(4) where applicable, collecting and preserving other relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies); and

(5) where applicable and possible, the Investigators should obtain the written consent of any third-party witnesses to the disclosure 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.

**(ii) Equal Treatment.** The Investigator(s) shall ensure that both parties have the equal opportunity to present witnesses, including experts, as well as other inculpatory and exculpatory evidence.

**(iii) Timetable for Submissions.** The investigators will set a specific time period within which all parties are permitted to submit any evidence that the parties would like the Investigators to consider. This deadline shall be at least three (3) days prior to the time that the Investigators are to notify the parties of their right to inspect and review the evidence. Alternatively, the Investigators may at the outset notify the parties that they will have the opportunity to provide additional evidence in response to their inspection and review of the evidence and also an opportunity to respond to the other party's additional evidence. In the later circumstances, if a party submits a written response, the Investigators shall provide a copy of any written response submitted to the opposing party in order to allow both sides to adequately prepare for the hearing.

**(iv) Reasonable Notice.** Each party who is invited to participate in a meeting with or interview by an Investigator shall be given sufficient written notice of the date, time, location, participants and purpose of the interview or other meeting such that the party shall have reasonable time to prepare to participate and to allow the opportunity for the party to be accompanied by an Advisor. In most cases, advance notice of at least three (3) school days will be considered sufficient, subject to adjustment based on the circumstances.

**(v) Ability to Prepare.** With the exception of any mutual no contact order that may limit communications or contact between the opposing parties, and the prohibition against Retaliation, neither party is restricted in his/her ability to discuss the allegations under investigation with others or to gather and present relevant evidence.

**(vi) Non-Disclosure Agreement.** The College will require each party and their advisors, if any, to execute a non-disclosure agreement that: (a) prohibits the dissemination of all evidence and any information made available for inspection and review under Article

IV(G)(viii) below, (b) prohibits the use of such information for any purpose unrelated to the Grievance Process under this Policy, and (c) prohibits the taking of photographs or otherwise copying evidence, including sensitive materials such as nude images.

**(vii) Redaction.** Before sharing documents, under Article IV (G)(viii), Investigators may redact information that is not directly related to the allegations, or that is otherwise barred from use, such as a legally recognized and unwaived privilege. Personally identifiable information may be redacted from a student's records if the information is not directly related to the allegations in the Complaint. Under Title IX regulations, the College is not required to redact student "education records" shared among the parties in the course of the investigation if they directly relate to the allegations raised in the Complaint because the evidence directly relates to the allegation and as such constitutes an education record of both the Complainant and Respondent. The Investigator will keep a clear record of what documents are withheld or redacted because they are determined not to relate to the allegations in the Complaint.

**(viii) Inspection and Review.** At least ten (10) days prior to completing and submitting the Investigative Report, the Investigators shall provide both parties an equal opportunity to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations raised in the Complaint, including evidence which is not intended to be relied upon in reaching a determination regarding responsibility, as well as all inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation. The Investigators shall not screen the evidence for relevance so long as the information, document, or material relates to the allegation under investigation. In this regard, while prior sexual behavior is generally irrelevant, the investigators must

nevertheless share prior history if such evidence is directly related to the allegations because it may be "offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or to prove consent."

**(ix)** **Format for Disclosure**. The Title IX Coordinator, designee, or Investigators will send to each party and the party's advisor, if any, the evidence subject to inspection and review in either an electronic format or a hard copy so as to provide the parties with the required ten (10) days to submit a written response. The College reserves the right to produce a copy of this evidence and the subsequent Investigative Report in a manner that will prevent either party from copying, saving, or disseminating the records.

**(x)** **Investigative Report.** In completing the Investigative Report, the investigator(s) will consider any timely written response submitted by either party. Following the parties' review and input, the Investigator(s) shall create an Investigative Report that fairly summarizes relevant evidence and sets forth the procedural steps taken in the investigation. The Investigative Report will initially be submitted to the Title IX Coordinator or designee for review. Thereafter, the Investigative Report shall be provided to both parties and their advisors at least ten (10) days prior to the Hearing. The Investigative Report shall only include relevant information, and the Investigators or the Title IX Coordinator or designee are permitted to redact information that is not relevant. Any evidence of a Complainant's sexual predisposition is never relevant and should be redacted from the report, and prior sexual behavior can only be included if it meets narrow exceptions.

**(xi)** **Review of the Investigative Report.** The Title IX Coordinator or designee shall review the Investigative Report before forwarding it to the parties to determine if grounds clearly

exist that require or permit the dismissal of the Complaint or certain of the allegations prior to the Hearing in accordance with Article IV(B) above.

This review is not designed to make the Title IX Coordinator or designee the decisionmaker, but to ensure only allegations of Sexual Harassment as defined by Title IX proceed to a Hearing under this Policy. The Title IX Coordinator or designee shall direct that the case proceed to a Hearing unless it is clear there is a proper ground for dismissal of all or certain of the allegations in the Complaint. The Title IX Coordinator or designee will specify which allegations and, if applicable, which other, related alleged misconduct will go forward for resolution under this Policy.

Should the Title IX Coordinator or designee dismiss all or part of the allegations in the Complaint, the decision will be reduced to writing with an explanation and promptly sent to each of the parties and advisors, if any.

Either the Complainant and/or the Respondent may appeal the Title IX Coordinator's or designee's dismissal decision as set forth in Article IV(B) above, and in accordance with the requirements and procedures for Appeal, as set forth in Article V(K), below.

**(xii) Formal (Hearing) versus Informal (Facilitated Resolution) Resolution**. At any time after a Complaint is filed and before a determination of responsibility is made by the Hearing Officer, either party may request to have the allegations in the Complaint resolved through the Facilitated Resolution Process (mediation) set forth in Article VI. This request is subject to the voluntary written consent and agreement of both parties and the other terms of Article VI.

## ARTICLE V. GRIEVANCE PROCESS

### A. Respondent's Acknowledgement of Responsibility Prior to Hearing

At any time prior to the date of the commencement of the Hearing, a Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Harassment. In such a situation, the designated 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 without a Hearing and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to such proposed sanction(s), then the Hearing Officer will convene a Hearing for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to Article V(K) of this Policy.

### B. Standard of Proof

The burden of proving that the Respondent is responsible for Sexual Harassment rests at all times on the College and not the parties. The standard of evidence to be used in determining responsibility at the Hearing level and on an Appeal shall be the **preponderance of the evidence**. This standard does not require corroborating evidence as the testimony of one person may be sufficient.

### C. Investigative Evidence at Hearing

All evidence that was collected by the Investigators and made available to the party's inspection and review under Article IV(G)(viii), shall also be made available at any Hearing so that each party shall have equal opportunity to refer to or use such evidence during the hearing.

### D. Appointment of Hearing Officer(s)

If a hearing is to be held, the Title IX Coordinator or designee shall appoint a Hearing Officer. The College may elect to have one Hearing Officer or a small committee of Hearing Officers in the form of a committee to conduct a hearing in which the Complainant, the Respondent, and any witnesses whose testimony the Hearing Officer(s) deems relevant shall appear, provide testimony, be subject to questioning by the Hearing Officer as well as the other party's Advisor. The Hearing Officer(s) will be the decisionmaker(s) on the question of responsibility on the allegations in the Complaint and to issue sanctions, if appropriate.

All individuals appointed by the College to serve as the Hearing Officer(s) under this Policy will have received specific training as required by Title IX regulations, and will be free of known conflicts of interest or improper bias. (See Article IV(A)(ii), above.)

The Title IX Coordinator or designee will share the Complaint, Notice and the Investigative Report with the Hearing Officer(s) and, if only a portion of the misconduct alleged in the Complaint is found to justify the Hearing, the assigned Title IX Coordinator will also specify which part(s) of the alleged misconduct will be the subject of the hearing.

**E. Notice of Hearing & Hearing Officer**

The assigned Title IX Coordinator will provide written notice simultaneously to the Complainant and the Respondent, on the date and time for the Hearing and the name of the individual appointed to serve as the Hearing Officer. If only a portion of the alleged misconduct will be addressed at the Hearing, the Notice will specify which part(s) of the Complaint are subject of the Hearing.

**F. Right to Challenge Appointment or Date**

Either party may challenge the appointment of the Hearing Officer(s) for bias of conflict by submitting a written objection to the Title IX Coordinator within three (3) days of the Notice of

Hearing. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine if an objective basis exists to find a conflict exists or the Hearing Officer or Hearing Committee is unable to serve impartially. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the Hearing Officer's impartiality. If a change in the Hearing Officer or Hearing Committee is made, both parties will be notified in writing as promptly as possible prior to the date of the Hearing.

Likewise, either party may also submit a written objection to the date and time set for the Hearing setting forth reasons for the proposed change. The Title IX Coordinator, with input from the Hearing Officer and the other party, will decide whether Good Cause exists to warrant the change in the Hearing date.

**G. Appointment of Advisor**

If a Complainant or Respondent notifies the assigned Title IX Coordinator at least **five (5) days** prior to commencement of the Hearing that s/he desires an advisor, but does not have an Advisor who can be present for the Hearing, the College will make arrangements to provide an individual of the College's choice to serve as the Advisor to the party at the Hearing. The College-provided Advisor need not be an attorney and shall be provided at no charge to the party.

**H. Hearing Procedures**

**(i) Submission of Written Materials by the Parties**. At least five (5) days prior to the start of the Hearing, the Complainant and the Respondent shall provide the Hearing Officer with a list of witnesses, if any, that each proposes to call at the Hearing and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and may also provide a written statement of position with regard to the

allegations. These submissions need not be shared with the opposing party, or their advisor.

**(ii) Notice of the Hearing Witnesses.** Not less than three (3) days prior to the start of the Hearing, the Hearing Officer or the assigned Title IX Coordinator will send a separate notice to the Complainant, the Respondent, and to each witness(es) whose testimony the Hearing Officer deems relevant, requesting such individuals to appear at the Hearing. The notice shall set forth, as applicable, the date, time, and location of the Hearing. The notices to the Complainant, the Respondent, and the Hearing Officer will provide the names of all witnesses and Hearing Committee that are requested to attend.

**(iii) Confidentiality & Disclosure.** In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing (including the Complaint, the Investigative Report, the notice of hearing, and the pre-hearing submissions referenced above); documents, testimony, or other information introduced at the hearing; and the Determination Letter may not be disclosed, except as may be required or authorized by law.

If it is determined, however, that the Respondent committed Sexual Assault, College policy does not prohibit the further disclosure of the Determination by either the Complainant or the Respondent.

**(iv) Failure to Appear or Participate.** No party or witness is compelled to participate in the Hearing. If the Complainant, the Respondent, or a witness fails to appear before the Hearing Officer or Hearing Committee, and such party or witness was provided proper

notice of the Hearing, then absent extenuating circumstances, the Hearing Officer (s) will proceed to make a determination of responsibility for the allegations in the Complaint. Should a party choose not to attend, his or her Advisor may still appear and conduct cross-examination.

The Hearing Officer(s) may consider and rely upon statements made outside of the hearing by a party or witness even if the party or witness is not present at a hearing, or if present, refuses to answer relevant questions on cross-examination, provided the Hearing Officer(s) finds that the earlier statement to be reliable and trustworthy under the totality of circumstances. In determining trustworthiness, the Hearing Officer may consider, among other factors: (i) the personal knowledge of the subject matter of the person making the statement, (ii) the credibility of the person testifying about the statement (if any), (iii) any apparent motive or bias the person may have to falsify or distort the subject matter of the statement, (iv) questions raised regarding the reliability and accuracy of the statement based on credentials (or lack thereof) of the speaker making the statement, (v) questions raised regarding the reliability and accuracy of the statement based on integrity (or lack thereof) of the document containing the statement or the circumstances under which the earlier statement was provided and (vi) whether other evidence directly or indirectly supports the reliability of the statement. The following documents often contain statements made outside of the hearing and these statements will be examined for reliability and trustworthiness by the Hearing Officer(s) before they are considered in determining responsibility on the charge: police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like. However, the Hearing Officer may not draw an inference about responsibility based solely on (i) a statement made outside of a hearing or (ii) the absence from the Hearing of a party or

witness, or the refusal of a party or witness to answer cross-examination questions.

**(v) Special Arrangements and/or Accommodations.** In addition to disability-related accommodations, the parties may request special arrangements and/or accommodations (for example, the ability to participate remotely in separate rooms) in connection with the hearing. Such requests must be submitted in writing to the Title IX Coordinator or designee no later than **five (5) days** before the Hearing. Upon receipt of such a request, the College will provide for the live hearing to occur with the parties located in separate rooms with the use of technology. Where such technology is used to create a virtual live hearing, the College will ensure that all parties and the Hearing Officer can simultaneously see and hear the person testifying and answering questions posed.

**(vi) No Contact Prior to the Hearing.** The Complainant and the Respondent are not to contact each other outside of the hearing, even to discuss the Hearing. This prohibition does not apply to communications between advisors of the parties.

**(vii) Role of Advisor/Cross-Examination.** Each party shall have the right to be accompanied by an Advisor for the purpose of asking the other party and witnesses relevant questions and follow-up questions, including questions that challenge credibility. Such questioning and cross-examination must be conducted directly, orally and in real time by the party's Advisor, and never by the party personally. Before a party or witness must answer a question posed by an Advisor, the Hearing Officer(s) must first determine if the question is relevant, and if not to state the reason for the record. Other than questioning the opposing party and witnesses, the Advisor will not otherwise participate in the Hearing by making opening or closing statements, etc.

**(viii) Hearing Recording.** An audio or audiovisual recording or transcript of the Hearing shall

be made by or under the direction of the Hearing Officer, and it shall be made available to the parties for inspection and review.

**(ix) Evidentiary Matters.** The Complainant and the Respondent will have an equal opportunity to present relevant evidence during the Hearing. Formal rules of evidence will not be observed during the hearing.

**(x) Prior Sexual Behavior.** Consistent with applicable rape shield laws, questions and evidence about the Complainant's sexual predisposition or past sexual behavior will not be permitted at the hearing, unless the questions or evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged Sexual Harassment, or when the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent to the alleged Sexual Harassment.

**(xi) Role of the Hearing Officer(s).** The Hearing Officer or Hearing Committee may question the Investigator(s), the parties, and any witnesses and will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy of the evidence and testimony). Members of the College community are expected to provide truthful testimony.

**I. Sanctions, Conditions, or Restrictions.** Sanctions, conditions or restrictions to be imposed upon a finding of responsibility depend upon the nature and gravity of the misconduct, as well as the record of prior discipline for Sexual Misconduct.

**(i) Potential Sanctions, Conditions, or Restrictions.** Sanctions, conditions, or restrictions 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 Hearing Officer(s).

**(ii)** The Hearing Officer(s) will determine sanctions, conditions or restrictions as part of the Hearing, giving consideration to whether a given sanction, condition, or restriction 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.

## J. Determination of Responsibility

**(i)** **Hearing Officer's Determination**. Within ten (10) days following the conclusion of the Hearing, absent extenuating circumstances, the Hearing Officer will deliver to the Title IX Coordinator the written determination regarding responsibility on each of the allegations applying the required Standard of Proof. This determination shall: (i) identify each the allegations of Sexual Harassment considered, (ii) set forth the procedural steps taken since the receipt of the Complaint, including notice to the parties, interviews of parties and witnesses, methods used to gather evidence, and hearings held, (iii) findings of fact supporting determination, (iv) conclusions regarding application of Code of Conduct to the facts, (v) a statement of and the rationale for, and the result as to each allegation, including a determination of responsibility, and (vi) a statement regarding any sanctions to be imposed and whether there are other remedies designed to restore equal access to Education Programs or Activities that should be provided to the Complainant.

**(ii)** **Notice of Determination**. The assigned Title IX Coordinator must promptly provide a copy of the Hearing Officer's or Hearing Committee's determination along with a statement explaining the procedures and permissible basis for appeal to the parties

simultaneously. The determination regarding responsibility is final either (i) on the date on which an appeal can no longer be considered timely, or (ii) if an appeal is filed, then on the date the Final Determination of the result of the Appeal is sent to the parties.

**(iii) Implementation of Sanctions, Conditions, or Restrictions.** Sanctions, conditions or restrictions imposed are not effective until the determination is final. However, the College retains the right to take Emergency Interim Action if the facts warrant such action under Article IV(A)(vi) above, or to take steps to prevent or remedy acts of Retaliation.

**(iv) Final Accommodations and Corrective Action.** In addition to any sanctions, conditions or restrictions imposed on the Respondent, promptly upon the Determination of Responsibility becoming final, the assigned Title IX Coordinator will determine if additional Supportive Measures should be provided to the Complainant, and will communicate such decision to the Complainant and, to the extent that it affects him, her or them.

The Title IX Coordinator or designee will also take steps, where necessary, to prevent the further harassment of or Retaliation against the Complainant, the Respondent, or other 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 training for the community, and/or providing counseling for the Complainant and Respondent.

**K. Appeals.**

Either party may appeal the Determination Decision of the Hearing Officer(s) as to responsibility and/or the sanction imposed on the Respondent. The Determination of Responsibility and sanction, conditions, or restrictions may, if desired, be appealed simultaneously. Appeals will be

handled by an individual or an Appeals Committee, depending on availability and circumstances. The appeals process also applies to the decision by the Title IX Coordinator to impose an Emergency Removal of a student under Article IV(A)(vi) or if the Title IX Coordinator or designee decides to dismiss all or some portion of the Complaint as permitted under Article IV(B), above.

**(i) Grounds for Appeal**.

(1) Emergency Removal Decision. The only permissible ground for appeal from an Emergency Removal decision are (a) that the available facts do not reasonably support the finding that the Respondent poses an immediate risk to the physical safety and health of the Complainant or others, or (b) there are measures short of removal from campus that will address any concerns without unreasonably burdening the Respondent and denying the Respondent the opportunity to participate in the College's Education Programs and Activities.

(2) Dismissal Decision. The only permissible grounds for an appeal from a Dismissal Decision made under Article IV(B):

(A) A procedural irregularity that affected the outcome.

(B) New evidence is available that was not reasonably available at the time of the decision that could affect the outcome of the matter.

(C) The Title IX Coordinator or Deputy Title IX Coordinator had a conflict of interest or was biased for or against the appealing party or against Complainant or Respondent generally that affected the outcome;

(D) The Dismissal Decision was based on a clearly erroneous application of Title IX and its regulations; and/or

(E) The Dismissal Decision was based on an improper weighing of the available evidence which usurped the proper role of the Hearing Officer who is the decision-maker for determinations of responsibility.

(3) Responsibility Determination. The only permissible grounds for an appeal of the Determination of Responsibility by the Hearing Officer are:

(A) New evidence is available that was not reasonably available at the time of the Hearing that could affect the outcome of the matter;

(B) A procedural irregularity occurred during the Investigation or the Hearing that could have affected the outcome of the Hearing; and/or

(C) The Title IX Coordinator, assigned Title IX Coordinator, Investigator, or Hearing Officer(s) had a conflict of interest or is biased against the appealing party specifically or has a bias for or against Complainants or Respondents generally that affected the outcome of the matter.

(4) Sanctions, Conditions or Restrictions. The decisions regarding the sanctions, conditions, or restrictions to impose on the Respondent may be appealed solely on the ground that the severity of the sanction is not commensurate to the gravity of the misconduct for which the Respondent was found responsible.

**(ii)** **Time of Filing**. Unless a different date is set for Good Cause, any appeal must be filed with the Title IX Coordinator within ten calendar days of the issuance of the Decision that is being challenged. The appeal must be in writing and set forth specific reasons for the appeal ("Appeal").

Any Appeal that does not plainly state one or more permissible grounds for an Appeal shall be dismissed by the Title IX Coordinator or the Appeals Committee and written notice of the dismissal of the appeal shall be sent to both parties.

**(iii)** **Appeal Notice**. Within two (2) days of receiving a timely and proper Appeal, the Title IX Coordinator shall provide written notice to the opposing party and provide a copy of the appeal with an explanation of the opposing party's right to submit a response.

**(iv)** **Equal Opportunity**. The opposing party to an Appeal will be given a reasonable time period to file a written response to the Appeal and in support of the decision at issue. Absent Good Cause the opposing party's response to the Appeal shall be submitted in writing within seven (7) days of receiving the Appeal Notice.

**(v)** **Appellate Decisionmaker**. The decisionmaker for an Appeal is called an Appropriate Divisional Leader or Appeals Committee. The College has the right to determine who the Appropriate Divisional Leader will be or the appropriateness of utilizing the Appeals Committee which would be composed of more than one representative of the College or utilize a trained outside contracted entity.

**(vi)** **Appellate Record**. A copy of the Appeal and the opposing party's response, if any, along with the Hearing Record (if applicable) ("Appellate Record") will be promptly delivered to the decisionmaker(s) by the Title IX Coordinator. The decisionmaker(s) will consider the full Appellate Record in reaching a determination on the Appeal and retains the discretion to request additional information from either party or the Title IX Coordinator, if deemed necessary. If additional information is requested, both parties will have an equal opportunity to discuss and respond to the additional information.

**(vii)** **Standard for Decision**. On all issues to be decided, the decisionmaker on Appeal shall apply the **preponderance of the evidence standard** and utilize an objective evaluation of the relevant evidence.

**(viii)** **Appellate Decision.** The decisionmaker(s) will issue a written decision describing the result of the Appeal and the rationale for the result. Absent extenuating circumstances or other Good Cause, a decision on the Appeal shall be issued within fourteen (14) days upon the delivery of the Appellate Record. If the decision on the Appeal is to be delayed, the decisionmaker will notify both parties. The decision on the Appeal is the final decision for the College.

**(ix)** **Notice of Final Decision**. The decisionmaker shall send a copy of the appellate decision to both parties simultaneously.

## L. Documentation

The College will retain documentation (including but not limited to the written Complaint, notifications, Dismissal Decisions, the Investigative Report, the Determination Decision, and the Appellate Record including the Appellate Decision and any written communication to the parties), for at least seven years. Documentation pertaining to terminations, expulsions or educational sanctions may be retained indefinitely. The College will retain any documentation of the mediation for at least seven years.

## M. 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.

## N. Transcript Notation and Removal

The Registrar of Roanoke College will include a prominent notation on the academic transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the College while under investigation for an offense involving sexual violence under the College's code of conduct, rules, or set standards governing student conduct. The notation will state that the student was suspended for, was permanently dismissed for, or withdrew from the College while under investigation for an offense involving sexual violence.

The College will (a) notify the student that any suspension, permanent dismissal or withdrawal will be documented on the student's academic transcript, and (b) the College will remove the notation from the student's academic transcript who is subsequently found not to have committed an offense involving sexual violence.

Roanoke College will remove from the student's academic transcript any notation due to the student's suspension if the student (i) completed the term and any conditions of the suspension, and (ii) has been determined by the College to be in good standing according to the College's Code of Conduct, rules, or set of standards. The Title IX Coordinator will submit in writing the removal of the notation if the terms of the conditions of the suspension have been met as well as communicate in writing to the Respondent with an anticipated date of the notation removal.

## ARTICLE VI. FACILITATED RESOLUTION (MEDIATION)

### A. Overview

The College also makes available a Facilitated Resolution, also known as Informal Resolution Process that utilizes mediation as a means for the parties to resolve allegations of Sexual Misconduct. If both parties agree to mediation, the Grievance Procedures will be put on hold until it can be determined whether an facilitated resolution can be reached by the parties. The mediation process offered by the College is provided without charge to the parties.

There is no requirement for either party, Complainant or Respondent, to agree or participate in the Facilitated Resolution Process. The mediation offered by the College must be voluntarily agreed to by both parties, and any resolution reached through mediation must also be voluntarily agreed to by both parties in order to become binding. No adverse action will be taken against any party who declines to agree to a request for mediation, or who elects to withdraw from the Facilitated Resolution Process before a comprehensive agreement that resolves all allegations is reached.

### B. Prerequisites for Mediation

A request for mediation can only be made after a Complaint has been filed and the Notice of Allegations has been provided (See Article IV(E)). Thereafter, either party may request the use of this Facilitated Resolution Process at any time before a determination is made as to the responsibility for the allegations in the Complaint. Additionally, mediation may not be used for less than all of the allegations in the Complaint (for example, parties may not choose to resolve a claim of Sexual Assault according to the Grievance Process, but then mediate all other claims). As noted, there is no requirement for any party to agree to use the mediator or to seek mediation.

### C. Nature of Agreement to Mediate

One benefit of the Facilitated Resolution Process is that the parties are able to fashion whatever resolution the two parties can agree upon provided it does not violate applicable law or the College's policies. In this regard, through the Facilitated Resolution Process the parties may agree to a resolution of the allegations in the Complaint that involves a range of responses and remedies. Any agreement reached by the parties shall be subject to the College's review to ensure compliance with governing law and College policy.

### D. Written Consent

Assuming the above prerequisites are met, the College will initiate the Facilitated Resolution Process only upon receipt of the signed written consent of both parties, which must indicate that they have read and understood all of the terms of the Facilitated Resolution Process as set forth in this Article VI.

### E. Trained and Impartial Mediator

Upon receiving a signed consent to mediate, the Title IX Coordinator or designee will appoint an individual to serve as mediator under this Facilitated Resolution Process who has received specific training as required by Title IX regulations and is free of known conflicts of interest or improper bias. The person appointed to serve as a mediator may be an employee of the College or a third party specifically engaged for this purpose.

## F. Activation of the Facilitated Resolution Process

Within three (3) days of receiving the signed written agreement to mediate, the Title IX Coordinator or Deputy Title IX Coordinator will send notice to the Complainant and Respondent setting forth: (i) the date, time, and location for the mediation; and (2) the name of the individual selected to serve as the mediator. Either party may challenge the selection of the mediator by submitting a written objection with specific reasons to the Title IX Coordinator or designee within three (3) days. Failure to submit a timely and proper objection with specifics will constitute a waiver of the right to object to the assigned mediator. The Title IX Coordinator or designee will make a determination based on an assessment of objective information available whether the mediator should be replaced for bias or lack of impartiality. Any decision to substitute the mediator will be provided in writing to both parties prior to the date of the mediation.

## G. Mediator's Role

The mediator is a confidential, neutral party who will assist the parties in seeing if an agreed upon resolution can be reached between them. In order to give the mediation the best chances for success, the mediator shall be free to speak, in confidence, to either of the parties or their advisors at any time, and the mediator will only share such information from such private discussions as may be expressly authorized. In the event that the mediation does not result in an agreed upon resolution of all allegations in the Complaint, **the mediator shall not be interviewed by the investigators or called as a witness at any Hearing held in the Grievance Process.** The mediator's notes, if any, shall be maintained in confidence pursuant to a privilege provided by federal and state law for communications made in the course of the mediation.

## H. Interaction of the Parties

One benefit of the Facilitated Resolution Process is that it provides a forum within which the parties may speak directly to each other in a controlled and confidential environment or the parties may want to participate in a "shuttle format", meaning that both parties agree to mediation, but may be more comfortable in the mediator "shuttling" information to each party to facilitate resolution. The mediator shall have the discretion to determine whether a joint meeting between the Complainant and Respondent is beneficial, and at what stage in the mediation process.

## I. Title IX Advisor in the Process

Both Complainant and Respondent have the right to be accompanied by an Advisor to any meeting with the mediator or any mediation session of their choice. The role of an advisor in the mediation is merely to consult with and privately advise only his/her client. The Advisor is permitted to question or cross-examine the other party, or to speak directly to the other party. The Advisor may speak with the mediator in private outside of the presence of the parties, and may also speak privately with the Advisor, if any, of the other party.

## J. Impact of Agreement on Grievance

If a mutual agreement is reached to submit the allegations of the Complaint to mediate, the Grievance Procedures shall be put on hold for a reasonable period of time to see if the mediator is able to reach an agreed upon resolution that is acceptable to both parties. As a result, the use of the Facilitated Resolution Process will cause an extension of the time table that normally applies for the Grievance Process.

## K. Withdrawal Right

Either party has the right to withdraw from the Facilitated Resolution Process and terminate the mediation at any time and for any reason. The decision to withdraw from the Facilitated Resolution Process will not result in any adverse action taken against the withdrawing party.

## L. Failure to Agree/Impasse

In the absence of extenuating services, or other Good Cause, if either party fails to appear for the scheduled mediation after being provided proper notice, the mediator may declare the mediation to be at impasse.

## M. Withdrawal/Failure of Agreement

In the event a party withdraws from the mediation, or the Facilitated Resolution Process has been unable to reach an agreed upon resolution within 5 days from the initial meeting with the mediator, the mediation will be declared to be at an impasse, unless both parties agree in writing to extend the time period in an effort to complete negotiations of an agreement. Upon a party's withdrawal or the mediation being declared at an impasse, the Grievance Process will resume from the point at which it was stopped and proceed through the Hearing.

## N. Implementation

Any agreement reached by the party in mediation shall be submitted to the Title IX Coordinator for review and approval based on Title IX and College policies. If the agreement is not approved for any reason, the parties will be notified, and if deemed appropriate another meeting of the parties, their advisors, the mediator, and Title IX Coordinator will be held as soon as reasonably practicable to explain the legal difficulty and to see if those difficulties may be resolved with the parties'

voluntary consent. Absent a new agreement being reached, the process will be declared at an impasse and the Grievance Process shall resume.

**EXHIBIT A: CONTACT INFORMATION & RESOURCES**

**to**

**SEXUAL MISCONDUCT POLICY AND PROCEDURES**

## COLLEGE RESOURCES

Roanoke College's **Title IX Coordinator** is Ashlee Williams, whose office is located in the Administration Building and may be contacted at akwilliams@roanoke.edu.

The **Campus Safety Department** is located at 9 North College Avenue and is available by phone at 540-375-2310. Campus Safety Officers are available 24/7.

**Student Health & Counseling Services** is located at 211 High Street and is available by phone at 540-375-2286. The office is staffed from 8:30 a.m. until 4:30 p.m. Monday through Friday during the academic year.

## LOCAL RESOURCES

**Local Law Enforcement Agencies** can be reached by calling 911.

**Carilion Roanoke Memorial Hospital** is located at 1906 Belleview Ave., Roanoke, VA 24014 and can be reached at 540-981-7337. This is the only facility in this region that can administer a **PERK (Physical Evidence Recovery Kit)** exam.

**SARA, Inc. (Sexual Assault Response and Awareness)** is a sexual assault crisis center and provides free confidential counseling services to survivors of sexual assault and abuse. Office: 540-344-7273. 24-Hour Hotline 540-981-9352.

**Suggested Actions for Survivors of Sexual Assault**

While all types of Sexual Misconduct are inappropriate and taken seriously by the College, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the survivor of a Sexual Assault, the College'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 charges or file a Complaint with the College.

**1. Ensure Your Physical Safety**

Help is available from **local law enforcement agencies** by calling 911 or by contacting the **College's Campus Safety Department**. The Campus Safety Department can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Campus Safety personnel are on duty at the Campus Safety Department 24 hours a day, seven days a week.

**2. Seek Medical Assistance and Treatment**

The steps you take immediately following an assault are very important. These steps will help to protect your health and the options available to you later on.

i. Preserve evidence. Do not bathe, douche, change clothes, brush your teeth, clean up, eat or drink. If you choose to have an evidence collection kit ("PERK" or "rape kit") completed, it is important to do so within 72 hours. This kit can still be completed even if you have showered or bathed. Even if you have not decided to file charges, it is advisable to have evidence collected so that you can preserve the option of pursuing charges within the criminal justice system at a later date. The local Emergency Department that provides such exams is Carilion Roanoke Memorial Hospital, located at 1906 Belleview Avenue, Roanoke, Virginia 24014, and can be reached at 540-981-7337.

ii. Get medical attention as soon as possible. Your health and safety should come first. This does not obligate you to press charges. Medical evaluation and care may address potential injuries, screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape-drugs) or the possible exposure to sexually transmitted infections or unwanted pregnancy. Student Health & Counseling Services provides testing and treatment for STI's and Plan B at no cost.

**3. Emotional Support**

Student Health & Counseling Services will provide a victim advocate and help you contact a support person, such as a friend, family member, roommate or SARA advocate for support. Licensed counselors are also available to provide crisis intervention and ongoing treatment. Counseling is free of charge to all students. Assault is a traumatic experience and you may have feelings of anger, fear, guilt and confusion, among others. These feelings are normal. Understanding and knowledgeable sources of support will promote recovery.

**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 (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 Roanoke College Sexual Misconduct Policy. College personnel can help you access resources (including recommendations for legal counsel, if requested) and can provide you with support and information, including information on the College's procedures for investigating and addressing instances of Sexual Assault.

**Supportive Measures**

Once the Title IX Coordinator is made aware of a report of Sexual Misconduct, the Title IX Coordinator will make contact with the Complainant in a reasonably prompt manner to offer supportive services, and to engage in an interactive process to discern what measures may be appropriate and available.

"Supportive Measure" means non-disciplinary, nonpunitive individualized services offered as appropriate and as reasonably available, without fee or charge, to the Complainant or Respondent before or after the filing of a Complaint and even if no Complaint is filed with the College. These measures are meant to restore or preserve equal access to the Education Program and Activities of the College without unreasonably burdening the other party, but also being designed to protect the safety of all parties and the College's educational environment, and to deter further sexual discrimination. In making the decision of what measures should be provided, the wishes of the party will be considered as well as the specific facts and circumstances taking into account the nature of the educational programs, activities, opportunities and benefits in which both parties are participating.

Supportive Measures may include any or all of the following:

**(i)** Counseling;

**(ii)** Extensions of deadlines or other course related adjustments;

**(iii)** Modification of work or class schedules;

**(iv)** Campus escort services;

**(v)** Mutual restrictions on contact between the parties;

**(vi)** Changes in work or housing locations;

**(vii)** Leaves of absence;

**(viii)** Other similar measures.

In certain specific circumstances, a Supportive Measure may include a one-way no contact order. For example, if the no contact order is designed to help enforce a restraining order, preliminary injunction, or other order of protection issued by a court, or if a one-way no contact order does not unreasonably burden the other party.

The Title IX Coordinator is responsible for coordinating an effective implementation of the Supportive Measures. When Supportive Measures are provided, the College will keep the delivery of such measures confidential to the extent that maintaining such confidentiality will not impair the ability of the College to provide them.

In those circumstances where a determination is made that the Respondent poses an immediate threat to the physical health or safety of the Complainant or others, there are separate steps that may be taken to remove the student or employee from the campus, but those are not Supportive Measures. See Emergency Removal provision (Article IV(A)(vi) of the Policy) which addressees the removal of a student and the ability to place an employee on administrative leave.

**EXHIBIT B: DEFINITIONS**

**to**

**SEXUAL MISCONDUCT POLICY AND PROCEDURES**

**(i)** **Actual Knowledge.** "Actual Knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment by report to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge under this Policy.

**(ii)** **Appropriate Divisional Leader.** The "Appropriate Divisional Leader" is the College administrator the Policy designates to handle a particular appeal or other issue. For Complaints against students, the Appropriate Divisional Leader is the Dean of Students. For Complaints against non-faculty staff members and third parties, the Appropriate Divisional Leader is the Vice President of Business Affairs. For Complaints against faculty members, the Appropriate Divisional Leader is Vice President for Academic Affairs/Dean of the College.

**(iii)** **Assigned Title IX Coordinator.** The "Assigned Title IX Coordinator" means either the Title IX Coordinator or the Deputy Title IX Coordinator assigned by the Title IX Coordinator or President to handle a given Complaint.

**(iv)** **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.

**(v)** **Complainant.** A "Complainant" means an individual who is alleged to be the victim of conduct that would constitute Sexual Misconduct, whether they are the person who reports the incident or files a Complaint.

**(vi)** **Complaint.** A "Complaint" means a written document signed by the Complainant or the Title IX Coordinator alleging conduct that if proven would constitute Sexual Misconduct, and contains a request for the College to investigate the allegation(s).

**(vii)** **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 regardless of the objections of another.

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:

1) Minors, even if the other participant did not know the minor's age;

2) Mentally disabled persons, if their disability was reasonable knowable to a sexual partner who is not mentally disabled; or

3) 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.

**(viii)** **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.

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

**(x)** **Deputy Title IX Coordinator.** The College's Deputy Title IX Coordinators work under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Title IX Coordinator may, at their discretion, assign a Deputy Title IX Coordinator as the Assigned Title IX Coordinator or designee in connection with a given Complaint.

**(xi)** **Domestic Violence.** "Domestic Violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is 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 Commonwealth of Virginia, 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 Commonwealth of Virginia.

**(xii)** **Education Program or Activity.** "Education Program or Activity" includes locations, events, or circumstances over with the College exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College. Education Programs or Activities occurring off-campus are limited to the three following situations:

1) The off-campus incident occurs as part of the College's operations;
2) The College exercised substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or
3) The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by the College.

Examples of off-campus Education Programs and Activities include, but are not limited to, buildings owned or controlled by College-affiliated Greek organizations (sororities and fraternities), College-affiliated sporting events, and events that occur off-campus that are sponsored by the College.

**(xiii)** **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.

**(xiv)** **Fondling.** "Fondling" is the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the other person, including instances where the other person is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**(xv)** **Good Cause.** "Good Cause" means factors deemed appropriate to justify a change in date or delay in the timetables established for responding to a Complaint, including the absence of a party, the party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; disruption and unavailability of technology resources that were planned to be used; or the closure or suspension of a substantial portion of College operations due to a federal, state or local order, the declaration of a state emergency, or similar action by a government agency.

**(xvi)** **Hearing Officer.** The "Hearing Officer" is a neutral decision-maker who is appointed by the Assigned Title IX Coordinator to decide responsibility at a Hearing (see Article V). The Hearing Officer will receive specific training as required by Title IX regulations, and will be free of known conflicts of interest or improper bias.

**(xvii)** **Incest.** "Incest" is non-forcible sexual intercourse between persons who

are related to each other within the degrees wherein marriage is prohibited by law.

**(xviii) Investigative Report.** "Investigative Report" is defined in Article IV(H)(xii).

**(xix) Investigator.** The "Investigator" is a neutral fact-finder who is designated by the Assigned Title IX Coordinator to investigate a Complaint. All individuals appointed to serve as Investigators will have completed all training required by the Title IX regulations, will be free of known conflicts of interest or improper bias, and may be a College employee or a third party engaged for this purpose.

**(xx) Non-campus Building or Property.** "Non-campus Building or Property" means (i) any building or property owned or controlled by a student organization officially recognized by the College, or (ii) any building or property owned or controlled by the College that is used in direct support of or in relation to the College's Educational Programs or Activities and which is frequently used by students, but is not within the same contiguous geographic area of the Campus.

**(xxi) 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.

**(xxii)** **Public Property.** "Public Property" means all public property including streets, sidewalks, parking facilities, and other thoroughfares that are within the Campus or immediately adjacent to and accessible from the Campus.

**(xxiii)** **Rape.** "Rape" is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sexual organ of another person without consent of the victim, and includes non-forcible sexual intercourse with a person who is under the age of 18.

**(xxiv)** **Respondent.** A "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**(xxv)** **Responsible Employee.** A "Responsible Employee" means an employee

of the College who does not work in the College's offices designated as "Strictly Confidential Resources."

**(xxvi)** **Retaliation.** "Retaliation" means any act by a person that intimidates, threatens, coerces or otherwise discriminates against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report, filed a Complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. The filing of a misconduct charge against an individual for a Code of Conduct violation that does not involve sexual discrimination or sexual harassment, but arose out of the same facts or circumstances as a report or complaint of sexual discrimination or sexual harassment, for the purpose of interfering with any right or privilege under Title IX, constitutes Retaliation. However, charging an individual with a Code of Conduct violation for making materially false statements, in bad faith, in the course of a grievance proceeding under this Policy does not constitute Retaliation provided, however, that the determination regarding responsibility alone is not sufficient to conclude any individual has made a materially false statement in bad faith.

**(xxvii)** **Sexual Assault.** "Sexual Assault" means any actual, attempted, or threatened sexual act with another person without that person's Consent, including instances where the person is incapable of giving Consent. Sexual Assault includes but is not limited to:

1) Rape;

2) Sodomy;

3) Sexual Assault with an Object;

4) Fondling; and

5) Incest.

**(xxviii) Sexual Assault with an Object.** "Sexual Assault with an Object" means to use an object or instrument (anything other than the offender's genitalia) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of the age or because of temporary or permanent incapacity.

**(xxix) "Sexual Harassment"** as defined by Title IX and its implementing regulations to mean alleged conduct on the basis of sex that satisfies one or more of the following:

1) Unwelcomed conduct that constitutes "Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as those terms are defined by federal law and as set forth in this Exhibit B.

2) Unwelcomed conduct that conditions the providing of any assistance, benefit or service of the College on the other person's participation in unwelcomed sexual conduct (a *quid pro quo* arrangement).

3) Unwelcomed conduct determined to be so severe, pervasive and

objectively offensive from the perspective of a reasonable person that it effectively denies a person equal access to an Education Program and/or Activity of the College.

No evaluation of the severity, pervasiveness, and offensiveness of the unwelcomed conduct and no separate finding of a denial of equal access is required when the College receives a report of alleged Sexual Misconduct that falls with points 1 or 2, as those elements are presumed from the nature of those allegations.

There are several limits to this Title IX definition. First, the alleged incident(s) of alleged Sexual Harassment must have occurred in the United States. Second, the incident(s) of alleged Sexual Harassment must occur in connection with an Educational Program or Activity of the College. The College's obligation under Title IX to respond to reported incidents of alleged Sexual Harassment that occur off campus is limited and extends to the three (3) following situations:

**1)** The incident occurs as part of the College's operations;

**2)** The College exercises substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or

**3)** The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by the College.

If the allegations made in the Complaint are not covered by the Title IX definition of Sexual Harassment, the Complaint or certain of its allegations may be dismissed (See Article IV(B)(i) below). In those circumstances where Title IX is determined not to apply, the College may, to the extent feasible or practicable, continue to investigate such allegations and address misconduct found to exist through its Student Code of Conduct, Faculty Handbook and/or Staff Handbook as may be applicable.

**(xxx)** **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. Sexual Misconduct also includes complicity in Sexual Misconduct. The College encourages reporting of all Sexual Misconduct, even if such conduct does not constitute Sexual Harassment under Title IX. Complaints of Sexual Misconduct that are not covered by Title IX will be addressed in accordance with other College policies and procedures, such as a Code of Conduct for students, faculty and/or staff.

**(xxxi)** **Sodomy.** "Sodomy" is oral or anal sexual intercourse with another person, without the Consent of the other person, including instances where the person is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

**(xxxii)** **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.

**(xxxiii)** **Strictly Confidential Resources.** "Strictly Confidential Resources" are all College employees who work in or for either the Office of Student Health & Counseling or the Office of Chaplain of the College.

**(xxxiv)** **Supportive Measures.** "Supportive Measures" means non-disciplinary, non-punitive individual services offered to the Complainant or Respondent as appropriate, as reasonably available, and without fee or charge. Supportive Measures provided to a Complainant or Respondent will be kept confidential unless disclosure is necessary to provide the service. Supportive Measures include but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the College campus, and other similar measures.

**(xxxv)** **Title IX Coordinator.** The College's "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 College 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 Policy.

# SEXUAL MISCONDUCT COMPLAINT FORM

Today's date: _____

**Information Regarding the Complainant:**

Name of the Complainant: _____

Complainant's Phone Number: _____

_____

The Complainant is (please check one): ☐ a faculty member ☐ a student

☐ a staff member

**Information Regarding the Respondent (if known):**

Name of the Respondent: _____

The Respondent is (please check one): ☐ a faculty member ☐ a student

☐ a staff member ☐ not affiliated with the College

**Information Regarding the Alleged Sexual Misconduct:**

Time and date of the alleged Sexual Misconduct: _____

_____

Location of the alleged Sexual Misconduct: _____

☐ on campus: _____

☐ off campus: _____

Witnesses or third parties who may have information regarding the alleged Sexual Misconduct:

_____

_____

_____

**Please provide a brief description of the alleged Sexual Misconduct:**

*You may wish to consider including, among other things, some or all the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged Sexual Misconduct, whether the Respondent used pressure or force (physical or otherwise) in the course of the alleged Sexual Misconduct, and the frequency (if applicable) of the alleged Sexual Misconduct.*

_____

_____

_____

_____

*Please feel free to use the reverse side of this form or separate pages to continue your description, if desired.*

By signing below, I am asking the College to investigate the allegations in this Complaint.

**Signature of the Complainant:** _____