

Effective 08/14/2020

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AND PROCEDURES¹

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1. Glossary

Advisor means a person chosen by a party or appointed by Shenandoah University (“Shenandoah” or “the University”) to accompany the party to meetings related to the resolution process, to advise the party on that process, and/or to conduct cross-examination for the party at the hearing, if any.

Complainant means an individual who is alleged to be the victim of conduct that could be sexual harassment based on a protected class or retaliation for engaging in a protected activity.

Complaint (formal) means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that Shenandoah investigate the allegation.

Confidential Resource means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).

Day means a business day when Shenandoah is in normal operation.

Education program or activity means locations, events, or circumstances where Shenandoah 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 Shenandoah.

Final Determination: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate this Policy.

Finding: A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).

Formal Grievance Process means “Process A,” a method of formal resolution designated by Shenandoah to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

Grievance Process Pool includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing Decision-maker or Panel refers to those who have decision-making and sanctioning authority within Shenandoah’s Formal Grievance process.

Investigator means the person or persons charged by Shenandoah with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Mandated Reporter means an employee of Shenandoah who is obligated by this Policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.²

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Official with Authority (OWA) means an employee of Shenandoah explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the university.

Parties include the Complainant(s) and Respondent(s), collectively.

Process A means the “Formal Grievance Process” detailed below and defined above.

Process B means any process designated by Shenandoah to apply only when Process A does not, as determined by the Title IX Coordinator.

Recipient means Shenandoah University, a postsecondary education program that is a recipient of federal funding.

Remedies are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Shenandoah’s educational program(s).

Retaliation is materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

Resolution means the result of an informal or Formal Grievance Process.

Sanction means a consequence imposed by Shenandoah on a Respondent who is found to have violated this Policy.

Sexual Harassment is the umbrella category for all offenses under this Policy, including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

Title IX Coordinator is at least one official designated by Shenandoah to ensure compliance with Title IX and Shenandoah's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.

Title IX Team refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

2. Rationale for Policy

the Shenandoah community. This community includes, but is not limited to, students,³ student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

4. Title IX Coordinator

Peter Kronemeyer serves as the Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating Shenandoah's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this Policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures.

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, or to report misconduct committed by the Title IX Coordinator, contact Shenandoah's Vice President of Administration and Finance. The Vice President of Administration and Finance is Robert Keasler, who may be contacted at (540) 665-4533 or rkeasler@su.edu.

6. Administrative Contact Information

Complaints or notice of alleged Policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Peter Kronemeyer
Title IX Coordinator
1460 University Drive
Wilkins Building 139

³ This Policy is applicable immediately after a student is enrolled at Shenandoah University throughout their entire matriculation.

Winchester, VA 22601

540-665-4921

Email: pkroneme@su.edu

Web: <https://www.su.edu/campus-life/shenandoah-universitys-stance-on-sexual-misconduct/>

Shenandoah has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation, except those employees designated as Confidential Resources in section 18a of this Policy.

Section 18 below on Mandated Reporting details which employees have this responsibility and their duties.

Concerns about Shenandoah University's application of Title IX may be made internally to the Title IX Coordinator, or to the Vice President of Administration & Finance, and externally to:

Office for Civil Rights (OCR)

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

Or, for complaints involving employees:

https://cm.maxient.com/reportingform.php?ShenandoahUniv&layout_id=1

3) Email nosexualmisconduct@su.edu

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that Shenandoah investigate the allegation(s). If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly. If a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator may choose to sign and file a Formal Complaint in accordance with section 19 of this Policy.

Anonymous reports are accepted but can give rise to a need to investigate. Shenandoah tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Reporting carries no obligation to initiate a Formal Complaint and response and Shenandoah will respect Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety. The Complainant is largely in control and should not fear a loss of privacy by making a report that allows Shenandoah to discuss the facts that might be included in a report, and/or provide supportive measures.

8. Supportive Measures

Shenandoah will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Shenandoah's education program or activity, including measures designed to protect the safety of all parties or Shenandoah's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon notice of alleged sexual harassment and/or retaliation.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested within 24 hours, objections to the emergency removal will be deemed waived.

11. Privacy

Shenandoah will use reasonable efforts to preserve the privacy of reports.⁴ Shenandoah will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Shenandoah reserves the right to determine which Shenandoah officials have a legitimate educational interest in being informed about incidents that fall within this Policy pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: For complaints involving students, Shenandoah's CARE Team, the Director of the Department of Public Safety, and Vice President of Student Affairs will typically be notified. For complaints involving faculty, the Director of the Human Resources Department and the Provost will typically be notified. For complaints involving staff, the Director of the Human Resources Department and the Vice President of Administration & Finance will typically be notified. Information will be shared as necessary with Investigators, Decision-makers/Panel Members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as practicable to preserve the parties' rights and privacy.

In cases involving students, Shenandoah may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Additionally, Virginia law § 23.1-806 requires Shenandoah to report non-personally identifiable information to the Commonwealth's Attorney's Office in instances where an alleged sexual assault would be a felony; and to disclose personally identifiable information to the Commonwealth's Attorney's Office in cases where the threat assessment team determines it is necessary to protect the health or safety of the student or other individuals.

⁴ For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Shenandoah employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Shenandoah has designated individuals who have the ability to have privileged communications as Confidential Resources.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to Shenandoah where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. Time Limits on Reporting

distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Shenandoah community.

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- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to Shenandoah's education program or activity.⁶

2) Sexual assault, defined as:

- a) Sex Offenses, Forcible:
Any sexual act⁷ directed against another person⁸,
without the consent of the Complainant,

⁶ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances

including instances in which the Complainant is incapable of giving consent.⁹

b) Sex Offenses, Non-forcible:

Incest:

- 1) Non-forcible sexual intercourse,
- 2) between persons who are related to each other,
- 3) within the degrees wherein marriage is prohibited by Virginia law.

Statutory Rape:

- 1) Non-forcible sexual intercourse,
- 2) with a person who is under the statutory age of consent of Virginia.

3) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

4) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Virginia, or

⁹ This definition set is not taken from SRS/NIBRS verbatim. Shenandoah has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that Shenandoah interprets "against the person's will" to mean "non-consensually."

- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Virginia.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 5) Stalking, defined as:
 - a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.
 - d. For the purposes of this definition—
 - i. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

Shenandoah reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

knowing, and
voluntary, and
clear permission
by word or action
to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Shenandoah to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must be considered in context. When parties consent to BDSM¹⁰ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Shenandoah’s

¹⁰ Bondage, discipline/dominance, submission/sadism, and masochism.

evaluation of communication in kink situations will be guided by reasonableness, rather than strict adherence to Policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault Policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. Retaliation

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the grievance process described in this Policy, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Shenandoah will take appropriate and reasonable steps to protect individuals who fear that they may be subjected to retaliation.

Shenandoah and any member of Shenandoah’s community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secure7(da)(a)7(t)-13(es)-6(i)JT

Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to providing evidence or testimony.

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

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Shenandoah to honor that request, Shenandoah will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

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

20. Federal Timely Warning Obligations

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

Shenandoah will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT

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1. Overview

Shenandoah will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator¹¹ or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If a dismissal occurs under Process A, please see Shenandoah’s Non-Discrimination and Bias Policy and Procedures for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps Shenandoah needs to take.

¹¹ Anywhere this procedure indicates “Title IX Coordinator,” Shenandoah may substitute a trained designee.

The Title IX Coordinator will proceed in at least one of three manners:

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

Shenandoah uses the Formal Grievance Process to determine whether the Policy has been violated. If so, Shenandoah will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a Formal Complaint because a review committee assessment indicates

If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:

an incident, and/or
a pattern of alleged misconduct, and/or
a culture/climate concern, based on the nature
of the complaint.

If it does not, the Title IX Coordinator will “dismiss” the complaint (or the aspect of the complaint that does not fall within Title IX), assesses which policy or policies may still apply and may then refer the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Shenandoah’s authority to address a complaint with an appropriate process and remedies.

In some cases, the Title IX Coordinator may determine that a threat assessment is necessary. A threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. Threat assessment is conducted by a review committee (a)52of6t a under Titonal

- 1) The conduct alleged in the Formal Complaint does not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Shenandoah (including buildings or property controlled by recognized student organizations), and/or Shenandoah does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of Shenandoah.¹³

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

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by Shenandoah; or
- 3) Specific circumstances prevent Shenandoah from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, Shenandoah will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

5. Right to an Advisor

The parties may each have an Advisor¹⁴ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁵

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-

Under U.S. Department of Education regulations under Title IX, a form of indirect

Shenandoah expects that the parties may wish to have Shenandoah share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Shenandoah also provides a consent form that authorizes the university to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Shenandoah is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Shenandoah will comply with that request at the discretion of the Title IX Coordinator.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Shenandoah. Shenandoah may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Shenandoah's privacy expectations.

Shenandoah generally expects an Advisor to adjust their schedule to allow them to attend Shenandoah meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Shenandoah may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

For representation, Respondents may wish to contact organizations such as:

FACE (<http://www.facecampusequality.org>)

SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

The Victim Rights Law Center (<http://www.victimrights.org>),

The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with this Policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. Shenandoah encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the default process for resolving Formal Complaints. Procedures for the Formal Grievance Process are outlined in this document.

Informal Resolution is applicable when the parties and Title IX Coordinator voluntarily

When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

When the Respondent accepts responsibility for violating Policy, and desires to accept a sanction and end the resolution process (this usually occurs post-investigation). This usually occurs post-resolution.

are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

(iii) Alternate and Negotiated Resolutions

Alternate Resolution is a less formal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, conduct and is encouraged as an alternative to the Formal Grievance process

Members of the Pool are trained annually, and may serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision)

How to assess credibility
Impartiality and objectivity
How to render findings and generate clear, concise, evidence-based rationales
The definitions of all offenses
How to apply definitions used by Shenandoah with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with its Policy
How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
Any technology to be used at a live hearing
Issues of relevance of questions and evidence
Issues of relevance to create an investigation report that fairly summarizes relevant evidence
How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors who are Shenandoah employees, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: <https://www.su.edu/campus-life/shenandoah-universitys-stance-on-sexual-misconduct/>

The NOIA will include:

10. Appointment of I

ole, and impartial investigation by identifying issues
vestigation plan, including a witness list, evidence
neframe, and order of interviews for all witnesses

o finalize their interview/statement, if necessary
investigation and Allegation (NOIA). The NOIA
ditional or dismissed allegations.
the parties of their right to have the assistance of an
e a member of the Pool or an Advisor of their
all meetings attended by the party.
ty and witness an opportunity to review and verify
otes (or transcript) of the relevant
ir respective interviews and meetings.
tify the parties of any meeting or interview
advance when possible.
r is expected, provide that party with written notice
1 of the meeting, as well as the expected participants

ant witnesses and conduct follow-up interviews as

inity to suggest witnesses and questions they wish
he other party and witnesses, and document in the
asked, with a rationale for any changes or omissions.
romptly and without unreasonable deviation from

s to the parties throughout the investigation.
investigation, provide the parties and their
sired by the parties) with a list of witnesses whose
ender a finding.
tigation report fully summarizing the investigation,
ldressing all relevant evidence. Appendices
r documentary evidence will be included.
ssess, and synthesize evidence, but make no
licy analysis, and render no recommendations as

ive

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-makers determine is relevant and credible may be considered. During the hearing, the Decision-makers will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, under Shenandoah's progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-makers at the sanction stage of the process when a determination of responsibility is reached. Impact statements are not part of the investigation report nor will a Decision-maker(s) consider the impact statements prior to a finding of responsibility.

After post-hearing deliberation, the Decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.

Any technology that will be used to facilitate the hearing.

Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

Information on how the hearing will be recorded and on access to the recording for the parties after the hearing. Recordings, or a transcript thereof, will be retained for seven (7) years. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or

The parties will be given a list of the names of the Decision-makers at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of

25. Hearing Procedures

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

Participants at the hearing may include the Chair and panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or up to three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

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

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

26. Joint Hearings

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

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged Policy violation.

27. The Order of the Hearing ó Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict

of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

30. Refusal to Submit to Cross-Examination and Inferences

To the extent permitted by law, and if deemed reliable and relevant by the decision-maker(s), and not otherwise subject to exclusion under this Policy, the decision-maker(s) may consider statements of persons who were not present at the hearing, or persons who were present at the hearing but who nevertheless were not subject to cross-examination. This includes, but is not limited to, opinions and statements in 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.

If charges of Policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Shenandoah's established rules of decorum for the hearing, Shenandoah may require the party to use a different Advisor. If a Shenandoah-provided Advisor refuses to comply with the rules of decorum, Shenandoah may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

31. Recording Hearings

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

The Decision-makers, the parties, their Advisors, and appropriate administrators of Shenandoah

The Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then use reasonable efforts to share the letter, including the final

The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated Policy violations.

The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever practicable.

limited to:

The nature, severity of, and circumstances surrounding the violation(s)

The Respondent's disciplinary history

Previous allegations or allegations involving similar conduct

The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation

The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation

The need to remedy the effects of the sexual harassment and/or retaliation on the

environment, for example a hostile sexual environment.

University housing relocation: requires the student to move to another room, hall or quad with approval from the Director of Residence Life (or designee). A student must relocate within 24 hours, after which he/she cannot enter the building from which he/she was removed throughout the term of the sanction without permission from the Dean of Students (or designee).

Written warning: official record that a student has been warned about behavior

No-contact order: student is prohibited from having any direct or indirect contact or contact via a third-party with a particular person. Violation may result in suspension.

Restriction of activities or privileges: participation in any and/or all organized University activities other than required academic endeavors are restricted for a designated period of time.

Conduct probation: a period of self reflection during which a student is on official warning that subsequent violations of University rules, regulations or policies are likely to result in more severe sanctions, including suspension or dismissal from the University.

Conduct suspension: a temporary cancellation of a student's enrollment at Shenandoah University with approval from the Vice President for Student Affairs (or designee). Once assigned this sanction, a student is immediately removed from classes and banned from University property. A student cannot enter University property during his/her term of suspension without prior permission from the Vice President for Student Affairs (or designee) nor graduate. Any classes taken at another institution while suspended typically cannot be transferred to Shenandoah University unless given special permission by the Vice President of Student Affairs (or designee) and the Academic Dean. If a student lives in campus housing, he/she has 24 hours to vacate his/her campus residence.

Campus ban: student is banned from being present on either the entire campus or specified areas of the campus.

with Shenandoah University. It is the most severe sanction.

All Shenandoah responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

37. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome. The Title IX Coordinator will submit the Request for Appeal to the appropriate appeals official.

Student appeals will be forwarded to the Vice President of Student Life or designee. Faculty member appeals will be forwarded to the Vice President of Academic Affairs or designee. Staff member appeals will be forwarded to the Vice President of Finance and

Climate surveys

Policy modification and/or training

Provision of transportation accommodations

Implementation of long-term contact limitations between the parties

Implementation of adjustments to academic deadlines, course schedules, etc.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective as of August 14, 2020.

APPENDIX A: POLICY EXAMPLES

Examples of Sexual Harassment

A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.

A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.

A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.

An ex-

Examples of Stalking

Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They

Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in