



# Sexual Misconduct Policy & Procedures

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**PART I: NOTICE OF NON-DISCRIMINATION, SCOPE AND JURISDICTION OF POLICY**

**A. STATEMENT OF POLICY AND NOTICE OF NON-DISCRIMINATION**

Webb Institute (“Webb”) is proud of its Honor Code, traditions, workplace, and academic environment and will endeavor to maintain a pleasant and collegial environment for employees, students, guests, and visitors, all of whom are expected to treat each other with courtesy, consideration, and professionalism. In accordance with Title IX of the Education Amendments of 1972 and its implementing regulations (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“VAWA”/“Campus SaVE Act”), Title VII of the Civil Rights Act of 1964, Article 129-B of the New York State Education Law (“Article 129-B”), the New York State Human Rights Law (“NYSHRL”), and all other applicable law, Webb is committed to providing a safe community, free from all forms of sex discrimination, including sexual harassment. In accordance with Title IX, Webb does not discriminate on the basis of sex in its educational programs and activities that it operates, including admissions and employment. Title IX requires Webb not to discriminate in such a manner. Under Title IX, discrimination on the basis of sex includes sexual harassment as defined below.

Any inquiries about the application of Title IX and related issues of sex discrimination, may be referred to Webb’s Title IX Coordinator, the U.S. Department of Education’s Asst. Secretary for Civil Rights, or both.

Ms. Alyssa Caliguri  
Title IX Coordinator and ADA/504 Coordinator (for Students)  
Director of Admissions and Student Affairs  
Webb Institute  
298 Crescent Beach Road  
Stevenson Taylor Hall  
Glen Cove, NY 11542  
Telephone: 516-403-5900/Main: 516-671-2213 Ext.1104  
Email: [acaliguri@webb.edu](mailto:acaliguri@webb.edu)

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Telephone: 1-800-421-3481  
Fax: 202-453-6012; TDD: 1-800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Webb has established this Sexual Misconduct Policy and Procedures (the “Policy”), to promptly and equitably address allegations of “sexual misconduct” including: all forms of sex/gender-based discrimination, sex/gender-based harassment, all forms of sexual harassment, sexual assault, dating violence, domestic violence, stalking, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as

retaliation as defined in this Policy (collectively referred to as “sexual misconduct”). This Policy: (i) defines prohibited conduct; (ii) sets forth available resources and reporting options; (iii) describes Webb’s processes for responding to reports, complaints, and formal complaints, as defined herein; and (iv) describes programs implemented by the Webb to educate and increase awareness among the Webb community.

## **B. TITLE IX COORDINATOR**

Any alleged Policy violations including information, reports, complaints, formal complaints, as well as any inquiries or concerns regarding this Policy or the state and federal laws covered in this Policy should be made to Webb’s Title IX Coordinator. Any member of Webb who believes that they have been a victim of sexual misconduct is encouraged to immediately report it to Webb’s Title IX Coordinator.

The Title IX Coordinator’s primary responsibility is to coordinate Webb’s compliance with Title IX including, but not limited to, overseeing Webb’s response to reports, complaints, or formal complaints of sexual misconduct and/or retaliation, coordinating investigations into allegations of sexual misconduct and/or retaliation, identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint or formal complaint of sexual misconduct, and assessing the effects of sexual misconduct on the campus climate. The Title IX Coordinator addresses all reports of sexual misconduct and/or retaliation in an equitable and neutral manner. The Title IX Coordinator is free from bias and conflicts of interest to oversee the implementation of this Policy. Concerns involving bias or conflicts of interest, misconduct, or discrimination by the Title IX Coordinator may be reported to the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)). Any concerns of bias or a potential conflict of interest or discrimination by any other individual involved in the processes set forth in this Policy should be reported to the Title IX Coordinator.

## **C. SCOPE OF POLICY**

This Policy is effective as of August 14, 2020 and governs all reports, complaints, and formal complaints of sexual misconduct made on or after such date. Any reports or complaints made prior to the effective date of this Policy will be reviewed under the January 2018 version of this Policy.

The fundamental objective of this Policy is to address all forms of sexual misconduct, including sex discrimination, and retaliation. Sex discrimination involves treating someone unfavorably because of that person’s actual or perceived sex; if an individual or group is excluded from participation in, or denied the benefits of, any Webb program or activity, including admissions and employment. Discrimination on the basis of sex also includes sexual harassment.

Allegations of a violation of this Policy are addressed under “Process A” or “Process B,” as determined by Webb’s Title IX Coordinator. Process A only applies to qualifying allegations of sexual harassment under Title IX (“Title IX sexual harassment”), including sexual assault, dating violence, domestic violence, and stalking. Process B applies to all other forms for sexual misconduct and retaliation, including sexual harassment that the Title IX Coordinator determines does not fall within Process A. Both Process A and Process B contain an informal process.<sup>1</sup>

This Policy applies to:

- All students and employees (including faculty and visiting faculty, staff, and administrators) involved in Webb’s academic, educational, and recreational programs regardless of sex, race, religion, national origin, disability, sexual orientation, gender identity, or other protected status;

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<sup>1</sup> Complaints of sex/gender-based discrimination and harassment that do not involve Title IX sexual harassment will also be covered under Process B.

- Visitors and guests;
- Third parties, including, but not limited to, contractors, subcontractors, all employees and applicants for employment in all positions, and other individuals affiliated with Webb by reason of employment or education and within Webb’s control.

While the *Webb Institute Campus Handbook* and the *Webb Institute Employee Handbook* will govern complaints regarding general misconduct by students, this Policy provides important definitions and other information that will be relevant to any member of the community.

Other forms of discrimination or harassment, including discrimination and harassment based on race, religion, disability, and any other protected class other than sex/gender and are governed by the Anti-Discrimination and Harassment policy. This Policy supersedes any information contained in that policy, if applicable, with respect to the definitions or procedures relating to sexual misconduct. Any inquiries about which policy applies may be raised with the Title IX Coordinator. Any requests for accommodations due to a disability can be raised with the Title IX and ADA/504 Coordinator using the contact information listed above.

#### **D. JURISDICTION**

This Policy applies to sexual misconduct and/or retaliation that occurs during Webb’s education programs and activities, and therefore covers all of the operations of Webb,<sup>2</sup> such as academics, extracurricular activities, and may also include computer and internet networks, digital platforms, and computer hardware or software owned by, operated by, or used in the operations of Webb. This Policy covers conduct that occurs on-campus, in Webb provided housing, and any other property owned or controlled by Webb, as well as off-campus at programs and activities sponsored by Webb, including study abroad.<sup>3</sup> Any online postings or other electronic communications will be in violation of this Policy the same as any other verbal, written, or physical conduct addressed in this Policy. Irrespective of where the sexual misconduct and/or retaliation took place, Webb will assess all reports, complaints, and formal complaints to determine whether the sexual misconduct and/or retaliation took place during its education program or activity or has a continuing effect on campus or in an off-campus sponsored program or activity.

Those members of the community inflicting such behavior on others are subject to the full range of institutional disciplinary actions, up to and including separation from Webb. Non-members of the community, such as guests or visitors, who inflict such behavior on campus, at campus events, or within campus programs may be referred for criminal prosecution, and/or barred from campus events and property, and/or referred to institutions or employers with which they are affiliated. All members of the Webb community are subject to this Policy. When the Respondent is not a member of the Webb community or the Respondent’s identity is not known, the Title IX Coordinator will nonetheless provide appropriate resources and support options to the Complainant, and/or assist the Complainant in contacting local law enforcement if the allegations include sexual misconduct and/or retaliation that is criminal and the Complainant wishes to file a report with the police. Guests and/or visitors impacted by sexual misconduct and/or retaliation are protected by this Policy. While sexual misconduct and/or retaliation can constitute a criminal offense under state or federal law, an individual’s conduct may violate this Policy even if it does not violate the

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<sup>2</sup> For the purposes of Title IX sexual harassment (34 CFR §§ 106.30, 106.44 and 106.45), “education program or activity” includes locations, events, or circumstances over which Webb exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and any building owned or controlled by a student organization that is officially recognized by Webb.

<sup>3</sup> Conduct that is prohibited by Article 129-B that is not covered by Title IX sexual harassment is addressed under Process B of this Policy. To the extent applicable, students maintain the rights set forth in the Students’ Bill of Rights during resolution of a complaint or formal complaint under Process A and/or Process B. N.Y. Educ. Law § 6440(6). A copy of the Students’ Bill of Rights is attached hereto.

law.<sup>4</sup>

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<sup>4</sup> Conduct that violates Webb policy may also violate New York State laws and subject the Respondent to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 and prohibited Stalking Offenses in Sections 120.45 to 120.60 of the New York State Penal Code, available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>.

## **PART II: AMENDMENTS AND DESIGNATION, DEFINITIONS, PROHIBITIONS, RESOURCES, PREVENTION AND AWARENESS, AND RECORDKEEPING**

### **A. AMENDMENTS AND DESIGNATION**

The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. Webb reserves the right at any time to change, delete, or add to any of the provisions of this Policy. Webb may, at its discretion, designate a trained and experienced individual(s) to act in the place of the Investigator, Hearing Officer, or Appeals Panel members, and/or facilitator(s) in this Policy. If there is such a designation, the Parties involved will be promptly informed.

### **B. POLICY DEFINITIONS**

**Actual Knowledge** means notice of Title IX sexual harassment or allegations of Title IX sexual harassment to Webb's Title IX Coordinator or any Webb official who has authority to institute corrective measures on behalf of Webb, also known as any Official with Authority as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report Title IX sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of Webb. Notice includes, but is not limited to, reports, complaints, and formal complaints of sexual misconduct, as defined herein. This standard is not met when the only official of Webb with actual knowledge is the Respondent. Once Webb has actual knowledge of Title IX sexual harassment, in its education program or activity against a person in the United States, Webb will respond promptly in a manner that is not deliberately indifferent, as defined herein.

**Advisor** means an individual who may be, but is not required to be, an attorney; and that is selected by each party to accompany the party to any related meeting or proceeding, to advise the party, and to conduct cross-examination for the party at the hearing in Process A, if any. If a party does not select an advisor and a hearing under Process A is required based on allegations of Title IX sexual harassment, Webb will appoint an advisor for purposes of conducting cross-examination.

**Affirmative Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following principles, along with the above definition, will be used as guidance for the Webb community:

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.<sup>5</sup>

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<sup>5</sup> In New York, a person under the age of seventeen cannot legally consent to sexual activity and is considered incapacitated.

- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of the rules or policies of Webb.

**Coercion** means unreasonable pressure to engage in sexual activity.

**Complainant** refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct and/or retaliation for engaging in a protected activity.

**Complaint** means a Process B document filed by a Complainant or signed by the Title IX Coordinator alleging conduct that may constitute a violation of this Policy, other than Title IX sexual harassment, against a Respondent and requesting that Webb investigate the allegation of sexual misconduct and/or retaliation. A complaint initiates Process B of this Policy.

**Confidentiality** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers, and pastoral counselors are examples of Webb employees who may offer confidentiality.

**Covered Non-Employees** include: (i) applicants for employment; (ii) interns, whether paid or unpaid; (iii) persons who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to Webb; and (iv) persons commonly referred to as independent contractors, “gig” workers, and temporary workers, including, but not limited to, persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with Webb.

**Dating Violence** as defined by VAWA at 34 U.S.C. § 12291(a)(10), means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: (i) length of the relationship, the type of relationship, (ii) the type of the relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

**Day** means a business day.

**Deliberately Indifferent** is defined in 34 C.F.R. § 106.44(a) and means that an institution is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances. Once Webb has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the U.S., it will respond promptly in a manner that is not deliberately indifferent.

**Disciplinary Sanction** means an action imposed by Webb on a Respondent where a determination of responsibility has been made and the Respondent has been found to have violated this Policy.

**Domestic Violence** as defined by VAWA at 34 U.S.C. § 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, 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 New York.



**Education Program or Activity** for purposes of 34 C.F.R. §§ 106.30 and 106.45, includes locations, events or circumstances over which Webb exercised substantial control over both the Respondent and the context in which the alleged Title IX sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Webb.

**Final Determination** means that a determination by the Hearing Officer or Appeals Panel that has become final. A determination is a finding by Webb based upon a preponderance of the evidence, regarding whether the Respondent is responsible for the alleged conduct and whether the alleged conduct constitutes a violation of this Policy. A determination indicates whether disciplinary sanctions, if any, are to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to Webb's education program or activity are to be provided to the Complainant. A "final" determination means the written determination containing the information required in 34 C.F.R. § 106.45(b)(7), as modified by any appeal by the Parties. A determination becomes a final determination on the date that Webb provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**Force** means the use of physical violence and/or imposing on someone physically to engage in sexual activity. Force can also include threats, intimidation, or coercion used to overcome an individual's freedom of will to choose whether or not to participate in sexual activity.

**Formal Complaint** means a Process A document filed by a Complainant (meaning a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that Webb investigate the allegation of Title IX sexual harassment. A formal complaint initiates Process A of this Policy. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of Webb.

**Grievance Process** refers to the formal and informal grievance processes set forth as "Process A," which is designated by Webb to address Title IX sexual harassment that falls within this Policy, and which complies with the requirements of Title IX (34 C.F.R. § 106.45). Process A only applies to reports and formal complaints of Title IX sexual harassment.

**Hearing Officer** refers to an individual who presides over the hearing conducted during the formal grievance process (Process A) and formal resolution process (Process B) of this Policy and issues a determination as to Policy violation(s).

**Intimidation** means implied threats that reasonably cause another to fear for that individual's safety or well-being.

**Investigator** means an individual appointed by the Title IX Coordinator to investigate the allegations of sexual misconduct and/or retaliation. Investigators are also charged with creating an investigative report that fairly summarizes relevant evidence.

**No Contact Order** is a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party. Continued intentional contact would be a violation of Webb policy subject to additional sexual misconduct and/or retaliation charges.

**Official with Authority** means an employee of Webb who has the authority to implement corrective action on behalf of Webb.

**Parties** include the Complainants and Respondents, collectively (a "party" is someone directly involved in a

proceeding). Others, such as witnesses and advisors, are not considered Parties.

**Preponderance of the Evidence** is the standard of proof to determine responsibility under this Policy, and which means that it is more likely than not that a violation of this Policy occurred.

**Privacy** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate Webb officials.

**Process A** means the grievance processes defined above and detailed below. Process A only applies to conduct that constitutes Title IX sexual harassment.

**Process B** means the resolution processes defined and detailed below. Process B applies to all allegations of sexual misconduct and retaliation that do not constitute Title IX sexual harassment.

**Prohibited Conduct** means conduct that constitutes a violation of this Policy, including sexual misconduct and retaliation.

**Remedies** are actions taken by Webb in favor of a Complainant and/or the Webb community after a determination of responsibility has been made through Process A and Process B. Remedies are designed to restore or preserve equal access to Webb's education program or activity. Remedies may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**Report** means a report made to the Title IX Coordinator that is verbal or written, by any person, alleging sexual misconduct and/or retaliation as defined herein. Such a report can be made at any time in person, by mail, by phone, or by electronic mail. A report is not the same as a complaint or a formal complaint and will not initiate either the grievance processes (Process A) or the resolution processes (Process B).

**Reporting Individual** means any individual who reports an alleged violation of this Policy to the Title IX Coordinator. This may or may not be the same as the Complainant, a witness, or a bystander.

**Resolution Process** refers to the formal and informal resolution processes set forth in "Process B," and which apply when Process A does not, as determined by the Title IX Coordinator. The resolution processes address all reports and complaints of sexual misconduct and retaliation as defined herein, except for all reports and formal complaints of Title IX sexual harassment.

**Respondent** refers to an individual who has been alleged to be the perpetrator of conduct that could constitute sexual misconduct and/or retaliation prohibited by this Policy.

**Retaliation** has various definitions under state and federal laws. See Section H of Part II.

**Sex** encompasses sex, gender, sexual orientation, gender identity, and/or gender expression.

**Sex Discrimination** involves treating someone unfavorably because of that person's actual or perceived sex. It occurs when, on the basis of sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in, or denied the benefits of, any Webb program or activity, including admissions and employment.

**Sex/Gender-Based Harassment** is unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassing conduct does not need to be based on anything of a sexual nature.

**Sexual Activity** includes any “sexual act” or “sexual contact.”

- A **sexual act** means (a) contact between the penis and vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight, of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- **Sexual contact** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate, harass, degrade or arouse, or gratify the sexual desire of any person.

**Sexual Assault** as defined at 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (“FBI”). These offenses are defined<sup>6</sup> as follows:

- **Sex Offenses**<sup>7</sup> include any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
  - **Rape – Completed** [SRS Definition] means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes either gender of victim or offender. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
  - **Rape (Except Statutory Rape)** [NIBRS Definition—to be used only when SRS is retired<sup>8</sup>] means the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - **Sodomy** means oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object** means to use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including

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<sup>6</sup> The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (“NIBRS”) User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI’s Uniform Crime Reporting Program Summary Reporting System (the “SRS”), dated June 20, 2013. Once the SRS is retired, the NIBRS definition of rape shall be used.

<sup>7</sup> Under the NIBRS User Manual dated 2011, available [here](#), this definition was used to describe “Sex Offenses, Forcible.” The following acts were classified as “Sex Offenses, Forcible”: Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.

<sup>8</sup> It is anticipated that the FBI will retire the SRS on January 1, 2021.

instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.

- **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- **Sex Offenses**<sup>9</sup> are also unlawful sexual intercourse:
  - **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in statutory rape; the act is not an attack.

**Sexual Exploitation** means abuse or exploitation of another person’s sexuality or nudity, without consent, for the Respondent’s own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Specific conduct that constitutes sexual exploitation could constitute Title IX sexual harassment if it meets the definition under Title IX. Examples of sexual exploitation include, without limitation:

- Causing or attempting to cause the incapacitation of another person for purposes of comprising that person’s ability to give affirmative consent to the sexual activity;
- Causing the prostitution of another person;
- Voyeurism (such as non-consensual observations, electronically video or audio recording, watching or taking pictures, videos or audio recordings of another person engaging in sexual activity, in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, such as a bathroom or shower or changing room, each without the affirmative consent of all parties);
- Transmitting intimate or sexual utterances, sounds, or images of another person in a state of undress or of a sexual nature;
- Disseminating, streaming, or posting sexual activity of any form on social media or any other public forum without permission from the individual reflected in such posting;
- Exceeding the boundaries of consent with another individual such as by allowing third parties to observe you engaging in sexual acts with another individual;
- Exposing one’s genitals to another person without affirmative consent;
- Distributing intimate or sexual information about another person;
- Administering alcohol or drugs (such as “date rape” drugs) to another person without their knowledge or consent for the purpose of sexual activity; and/or
- Knowingly transmitting to or exposing another individual to a sexually transmitted infection or virus, including but not limited to HIV, without the other individual’s knowledge.

**Sexual Harassment** has various definitions under state and federal laws. See Section C of Part II.

**Sexual Misconduct** is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of sex/gender-based discrimination, sex/gender-based harassment, all forms of sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-

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<sup>9</sup> Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape. Moreover, please note that under the most recent NIBRS, failure to register as a sex offender is also considered a sex offense and is defined as failing to register or keep current a registration as required by state and federal laws.

consensual sexual activity prohibited by this Policy.

**Stalking** as defined by VAWA at 34 U.S.C. § 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

**Supportive Measures** are non-disciplinary and non-punitive individualized services offered as appropriate and reasonably available, without fee or charge to the Parties before or after the filing of a complaint or formal complaint or where no complaint or formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to Webb’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or Webb’s educational environment, or to deter sexual misconduct and/or retaliation. Supportive measures can include various forms or services as set forth in Section E of Part III of this Policy.

**Title IX Coordinator** means the Title IX Coordinator and/or their designee(s). The Title IX Coordinator may delegate certain responsibilities under this Policy to designees, who will be appropriately trained.

### C. SEXUAL HARASSMENT

Sexual harassment is an unlawful form of discrimination. Sexual harassment may be committed by any individual upon another, regardless of that individual’s sex, sexual orientation, gender identity, or gender expression. The term “sexual harassment” has various definitions under applicable laws and by various bodies, including the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission (“EEOC”), and New York State. Reports and formal complaints of sexual harassment that constitute Title IX sexual harassment are addressed under Process A of this Policy. Reports and complaints of conduct that do not constitute Title IX sexual harassment as well as conduct that may constitute Title VII or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions.

#### I. Title IX Sexual Harassment

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. A Webb employee conditioning the provision of an aid, benefit, or service of Webb on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Webb’s education program or activity;<sup>10</sup> or
3. Sexual assault, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence, as defined in 34 U.S.C. § 12291(a)(10), domestic violence, as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. § 12291(a)(30). Definitions for these terms are also provided in Section B of Part II above.

To fall under Title IX, the sexual harassment must have occurred during Webb’s education program or activity against a person in the United States. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in Webb’s education program or activity.

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<sup>10</sup> Categories 1 and 3 do not require elements of severity, pervasiveness, or objective offensiveness. Severity, pervasiveness, and objective offensiveness must be evaluated in light of the known circumstances and depend on the facts of each situation but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.

## **II. Title VII Sexual Harassment**

It is unlawful to harass a person because of that person's sex. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, *or* offensive working environment.

## **III. NYSHRL Sexual Harassment<sup>11</sup>**

NYSHRL sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. NYSHRL sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. NYSHRL sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. NYSHRL sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

NYSHRL sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment. Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

NYSHRL sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client,

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<sup>11</sup> The NYSHRL applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with Webb; all must follow and uphold this Policy. Any employee or individual covered by this Policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.

customer or visitor.

Unlawful NYSHRL sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

### Examples of NYSHRL Sexual Harassment

The following describes some of the types of acts that may be unlawful NYSHRL sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

Preventing sexual harassment is everyone's responsibility. Webb cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Title IX Coordinator. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Title IX Coordinator.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy (Appendix A), and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Employees, paid or unpaid interns or non-employees who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe

what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. All persons involved, including Complainants, witnesses, and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Webb will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this Policy. NYSHRL sexual harassments claims will be handled as outlined below and in accordance with Process B.

#### **D. PROHIBITION ON CONSENSUAL RELATIONSHIPS**

The nature of the academic experience at Webb requires faculty members to develop close, supportive working relationships with students. Personal bonds should not be permitted to interfere with the professor/student relationship. All employees are, therefore, prohibited from having sexual relations and/or romantically intimate or amorous relationships with any Webb students.

Similarly, any administrator or employee in a supervisory role may not have sexual relations and/or romantically intimate or amorous relationships with any student or employee they supervise directly or indirectly. If, after the commencement of a consensual sexual, amorous, or romantically intimate relationship that is not prohibited by this Policy, the individuals learn that due to a change in their duties, responsibilities, assignments or positions, their relationship will now be prohibited, both individuals are required to notify the Title IX Coordinator as soon as possible in order to determine how to proceed. Notification is required regardless of whether the consensual relationship still exists.

Persons involved in consensual sexual, amorous, or romantically intimate relationships outside of the employee/student, supervisor/subordinate, or others previously noted, must exercise caution to prevent the development of harassing behavior or use of authority inappropriately. Consensual relationships can change and conduct once welcomed by both, may become unwelcome to one. The fact that there is initial consent to forming a romantic relationship or a specific sexual encounter does not preclude a charge of harassment in the future. Webb will respond to all reports of prohibited or inappropriate sexual, amorous, or romantically intimate behavior. Webb maintains discretion to determine consequences for violating this policy on consensual relationships, which may include but is not limited to termination from employment.

#### **E. INTENT**

Failure to recognize that one's behavior is harassing or discriminatory to an individual or group of individuals is not an acceptable defense to sexual misconduct. Differences in perception on the part of individuals involved in complaints of sexual misconduct will be resolved based on the "reasonable person" standard in evaluating offensive behavior. All members of Webb community should consider how a reasonable person might view the behavior, not just the individual person's subjective intent.

#### **F. INDIVIDUAL SPEECH GUIDELINES AND ACADEMIC FREEDOM**



Webb encourages the free flow of thoughts and ideas essential to higher education. While Webb does not encourage offensive or insensitive speech, principles of academic freedom limit Webb’s ability to restrict speech that is germane to academic subjects and pedagogically appropriate to those subjects. However, when speech rises to the level of sexual misconduct, as defined herein, it is not protected by academic freedom.

## **G. COOPERATION AND TRUTHFULNESS**

All members of the Webb community, including students, faculty, and staff are expected to report all violations of this Policy and assist and cooperate in the application of this Policy, in particular by cooperating with Webb during the various processes outlined in the Policy. This includes responding in a timely manner to requests from the Title IX Coordinator or Investigator and making reasonable adjustments to schedules to participate in meetings, hearings, or other proceedings. Further, individuals are expected to provide information in good faith; as discussed in more detail in Section A of Part III of this Policy, knowingly providing false information or making false allegations is strictly prohibited and is subject to discipline.

## **H. PROHIBITION AGAINST RETALIATION**

Webb prohibits any form of retaliation as defined herein. Unless the form of retaliation constitutes Title IX sexual harassment, which would be addressed under Process A, all reports and complaints alleging retaliation under this Policy or the laws covered by this Policy should be addressed under Process B. The following constitutes “retaliation”:

### **I. Title IX Retaliation<sup>12</sup>**

Webb will not tolerate any intimidating, threatening, coercing, or discriminating behavior 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, complaint, or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of Title IX sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation under this subsection of the Policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### **II. Title VII Retaliation**

In accordance with Title VII, Webb will not discriminate against any of its employees or applicants for employment because of the employee’s or applicant’s opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

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<sup>12</sup> Complaints alleging retaliation may be filed according to the resolution processes for sex discrimination required to be adopted under 34 C.F.R. § 106.8(c), which is Process B under this Policy.

### **III. NYSHRL Retaliation**

No employee covered by this Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. Webb will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected NYSHRL sexual harassment. Any employee of Webb who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns or non-employees who believe they have been a target of such NYSHRL retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Under the NYSHRL, unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYSHRL protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the NYSHRL: or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

### **I. RESOURCES**

There are a number of on-campus and off-campus resources available that can help after an incident of sexual misconduct. Any student, employee, or third party who believes that they are or may have been subject to sexual misconduct and/or retaliation are strongly encouraged to report it in accordance with the procedures set forth in this Policy. For emergency or immediate assistance (24 hours a day, 7 days a week) contact the Glen Cove Police Department (516) 676-1000 or 911.

#### **I. Immediate Medical Assistance and Counseling Resources**

If you or someone you know is or may be the victim of any form of sexual misconduct and/or retaliation, Webb strongly urges you to seek immediate assistance. Seeking assistance promptly may be important to ensure physical safety or to obtain appropriate medical care and emotional support. It may also be necessary to preserve evidence. Assistance is available from:

- Local Police and Emergency Assistance: Call 911 or (516) 676-1000
- Local hospitals: Call 911 to obtain contact information

- North Shore University Hospital (SAFE Designated Hospital): (516) 562-8730
- New York State Office of Victim Services Toll Free Number: (800) 247-8035
- New York State Domestic Violence Hotline: (800) 942-6906
- National Sexual Assault Telephone Hotline: (800) 656 - HOPE (4673)
- New York State Police Non-Emergency: (631) 756-3300 (Troop L Headquarters)
- New York State Police Sexual Assault Hotline: (844) 845-7269
- The Safe Center LI - Rape/Dating, Domestic Violence Hotline: (516) 542-0404 (cost-free)
- Webb Psychologist, Dr. Michelle Stein: mstein@webb.edu (cost-free)

Victims of sexual assault should receive immediate medical attention. Sexual Assault Forensic Examiners (“SAFE”) are specially equipped and trained to handle sexual assault and gather evidence. Students may seek assistance from SAFE at no cost. North Shore University Hospital (300 Community Drive, Manhasset, NY 11030 / (516) 562-8730 is the closest SAFE Designated Hospital to Webb.) To preserve evidence, do not shower, bathe, brush teeth, change clothing or drink liquids before going to the hospital or the police after experiencing sexual misconduct.

## **II. Webb Counseling Resources**

Webb encourages all members of the campus community to report incidents related to this Policy. However, students who are not ready or willing to make a formal report, but still wish to speak with someone, can utilize the confidential resources of the Webb’s Psychologist, Dr. Stein. Webb also has a Memorandum of Understanding (MOU) in place with the Safe Center LI. This organization can provide counseling resources to both employees and students. The resources provided by Dr. Stein or the Safe Center LI are completely confidential and prohibit the release of information without the express consent of the individual.

## **J. PREVENTION AND AWARENESS PROGRAMS**

Creating a safe and respectful environment is the responsibility of all members of Webb’s community. To promote and maintain this environment, Webb engages in comprehensive educational programming to prevent sexual misconduct and/or retaliation. Webb provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees. Webb seeks to ensure that all programs are culturally relevant, responsive to community needs, and informed by research and assessed for value.

## **K. RECORDKEEPING**

For a period of 7 years, Webb will maintain records generated in connection with sexual misconduct and/or retaliation reports, investigations, disciplinary proceedings, hearings, informal resolutions, appeals, and the audio, audiovisual recording, or transcript, as well as any determinations regarding responsibility including any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant. All materials used to train (in connection with Process A) the Title IX Coordinator, Investigators, Hearing Officers, and any individual who facilitates the informal processes will also be maintained for at least 7 years.

For a period of 7 years, Webb will also maintain records of any responses, including supportive measures, that Webb took in response to a report, complaint, or formal complaint of sexual misconduct and/or retaliation. In each instance, Webb will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Webb’s education program or activity. If Webb does not provide supportive measures to a Complainant, Webb will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain

bases or measures does not limit Webb in the future from providing additional explanations or detailing additional measures taken.

**PART III: REPORTING, INVESTIGATIONS, GRIEVANCE PROCESSES, AND RESOLUTION PROCESSES, GENERALLY**

**A. REPORTING OPTIONS: WHAT TO DO IF YOU ARE EXPERIENCING (OR HAVE EXPERIENCED) SEXUAL MISCONDUCT AND/OR RETALIATION**

Webb encourages individuals who experience, witness or become aware of alleged sexual misconduct and/or retaliation to report the incident to the Title IX Coordinator. Webb will assist individuals in contacting law enforcement, if desired. Webb also provides individuals the opportunity to confidentially discuss alleged incidents with a trained professional on campus. For more information on how to file a complaint of sexual misconduct and/or retaliation or a formal complaint of Title IX sexual harassment please see Section A of Part IV for formal complaints (Process A) and Section A of Part V for complaints (Process B).

**I. Law Enforcement Notification**

Webb strongly encourages you to promptly report an incident of sexual misconduct and/or retaliation to the police. Law enforcement can help ensure the preservation of evidence and facilitate a timely investigation and response. Webb representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and/or retaliation and in contacting law enforcement or legal service organizations to learn about these remedies. If requested, Webb will also provide assistance with making this contact and initiating legal proceedings in family court or civil court. Except in instances where the victim is underage, Webb will respect a victim's decision regarding whether or not to report an incident to local law enforcement. Where an incident involves the suspected abuse of certain individuals, such as minors, Webb may have an obligation to report to law enforcement under New York State law.

a. Orders of Protection

Webb representatives are also available to assist students in acquiring a New York State court order of protection. If an order of protection is granted, the Parties have the right to receive a copy of the order when Webb receives it. The Parties will also have the opportunity to have Webb explain the order, the consequences for violating the order, and answer any questions about the order. If the party against whom the order is made violates the order of protection, the protected party may receive assistance from Webb in calling local law enforcement to inform them of the violation.

b. Effect of Criminal Proceedings

Upon notice of the report, complaint, or formal complaint, Webb's investigation will proceed regardless of whether a criminal matter is pending, though short delays may be allowed for outside law enforcement agencies to conduct their investigation. The filing of a complaint or formal complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. Webb will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the Complainant and the Webb community, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days, except when law enforcement specifically requests and justifies a longer delay. Not all sexual misconduct under this Policy is a crime<sup>13</sup> and the standard applied in criminal cases (beyond a reasonable doubt) is different than

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<sup>13</sup> Penal codes and definitions vary by state and federal law. These definitions may also differ from the definitions of violations in this Policy. New York Penal law Article 130 addresses sex offenses and can be accessed at <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>.

Webb's standard (preponderance of evidence) under this Policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the District Attorney.

## II. Webb Notification

Webb urges anyone who becomes aware of an incident of sexual misconduct and retaliation to report the incident immediately to the Title IX Coordinator. Any incident of sexual misconduct reported to a Webb employee, with the exception of those designated as confidential, as set forth herein, must be reported by the employee to the Title IX Coordinator.

Any individual (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual misconduct and/or retaliation) may report incident to the Title IX Coordinator at any time (including during non-business hours) in person, by using the telephone number, email address, or by mail to the office address listed herein for the Title IX Coordinator. A Complaint Form is available on Webb's website (<http://www.webb.edu/wp-content/uploads/2016/02/Sexual-Misconduct-Complaint-Form-2018.pdf>) and in the offices of the Title IX Coordinator and the Director of Human Resources. You may choose to file the complaint form anonymously.<sup>14</sup> This form will be received and reviewed by the Title IX Coordinator unless the complaint or formal complaint is against the Title IX Coordinator, in which case the form will be returned to, and reviewed by, the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)).

Webb will confidentially maintain the identities of reporting individuals, Complainants, individuals who have been reported to be perpetrators of sexual misconduct and/or retaliation, including Respondents, and witnesses, except as may be permitted by the Family Educational Rights and Privacy Act and its implementing regulations ("FERPA"), as required by law, or as necessary to conduct proceedings under this Policy. To the extent possible, information reported to the Title IX Coordinator will be shared only with individuals responsible for handling Webb's response to the report.

### a. Initial Assessment

Upon receiving a report, complaint, or formal complaint of an alleged violation of this Policy, the Title IX Coordinator will commence an initial assessment within 10 business days:

- The Title IX Coordinator will contact and provide the Complainant a written explanation of their rights and with options to proceed with respect to their report of sexual misconduct and/or retaliation, offer immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; and referrals for medical treatment at local hospitals, existing counseling and legal assistance, and trauma centers), and other services available both within Webb and in the community.
- A reporting individual will have emergency access to the Title IX Coordinator who is properly trained. The Title IX Coordinator will provide the reporting individual with information regarding their options to proceed, and other important information about their rights under Webb policy and the law. Such information includes, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes

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<sup>14</sup> To the extent possible, Webb will investigate anonymous reports in order to determine what actions it may be able to take, including to provide supportive measures. However, Webb's ability to respond to the report may be limited, including Webb's ability to provide supportive measures if the Parties' identities are unknown. Additionally, a known Complainant cannot remain anonymous during the formal grievance process set forth in Process A regardless of whether the Complainant or the Title IX Coordinator files the formal complaint. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with filing a formal complaint, should circumstances warrant. However, like with reports, Webb's ability to respond to a formal complaint will be limited.

different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the District Attorney. The Title IX Coordinator will also explain whether they are authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.<sup>15</sup>

- The Title IX Coordinator will determine whether the scope of the allegations fall within the jurisdiction of this Policy.
- The Title IX Coordinator will promptly make supportive measures available to the Parties upon receipt of a report, complaint, or formal complaint. The Title IX Coordinator will discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a complaint or formal complaint, and explain to the Complainant the process for filing a complaint or formal complaint.<sup>16</sup> At the time that supportive measures are offered, Webb will inform the Complainant, in writing, that they may file a complaint or formal complaint with Webb either at that time or in the future, if they have not done so already.
- The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers a supportive response, an informal option, if applicable, or an investigation, and formal grievance process (Process A) or formal resolution process (Process B), if applicable.
- The Title IX Coordinator determines the applicability of a grievance process under Process A and if the complaint does not fall within the scope of Process A, assess which processes may apply to the complaint (e.g., Process B). If the allegations fall within the scope of Process A, then the Title IX Coordinator will inform the Complainant of the option to file a formal complaint as well as the process for doing so. If the Complainant decides to file a formal complaint, please see Section A of Part IV.
- If the Complainant wishes to proceed with either process, if applicable, or Webb believes it is otherwise necessary, the Title IX Coordinator will ascertain the name of the Respondent, the date, location, and nature of the alleged sexual misconduct and/or retaliation, and in a timely fashion, will notify the Respondent of the allegations and supportive measures available to the Respondent. If a formal complaint is filed, the Title IX Coordinator will provide initial notice to the Parties as further described in Section B of Part IV of this Policy. The grievance processes and resolution processes outlined in this Policy will be followed before any discipline is imposed on the Respondent.

#### b. Time for Reporting

There is no time limit for reporting sexual misconduct and/or retaliation. Complainants are encouraged to report any alleged sexual misconduct and/or retaliation immediately in order to maximize Webb's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation and adjudication. Webb's ability to investigate and respond effectively may be reduced with the passage of time. However, reports may be made at any time without regard to how much time has elapsed since the sexual misconduct and/or retaliation.

#### c. Student Amnesty

The health and safety of every student at Webb is of utmost importance. Webb recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Webb strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Webb officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence,

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<sup>15</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. See Section B of Part II.

<sup>16</sup> For a period of 7 years, Webb will maintain a record of any supportive measures provided to the Parties. This documentation is further explained in Section K of Part II of this Policy.

stalking, or sexual assault to Webb officials or law enforcement will be not be subject to discipline pursuant to the procedures outlined in the Webb Institute Alcohol and Other Drugs Policy and the Student Organization Handbook for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

d. False Information and Bad Faith Reporting

Knowingly submitting a false report of sexual misconduct and/or retaliation or knowingly providing false or misleading information in bad faith in connection with an incident of sexual misconduct and/or retaliation is prohibited and subject to disciplinary action, up to and including dismissal from Webb. An individual who does so during any part of Webb's processes, including filing a report containing false allegations or during the formal grievance process or informal resolution process, whether a party or a witness, is violating Webb policy. Such bad faith reporting may constitute retaliation in violation of this Policy. However, a determination regarding responsibility alone is not sufficient to conclude that the individual made a false statement deliberately and in bad faith. For example, if a Respondent is found not responsible, the Complainant or reporting party who made the allegations is not automatically determined to have made allegations that are false or in bad faith based on that outcome alone. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate.

e. Public Awareness and Advocacy Events

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public events, Webb is not obligated to begin an investigation or process based on such information, unless a report, complaint, or formal complaint is filed with the Title IX Coordinator because the Complainant clearly indicates that they desire a report to be made or seek a specific response from Webb. Webb will use the information provided at such an event to inform its efforts for additional education and prevention efforts.

## **B. REQUIRED REPORTING**

Webb values privacy and understands that, for many victims of sexual misconduct and/or retaliation, confidentiality is a primary concern. However, certain Webb employees are required to share information they are aware of regarding sexual misconduct and/or retaliation. While not all Webb employees are required to report sexual misconduct and/or retaliation, Webb employees are strongly encouraged to contact and inform the Title IX Coordinator of any such incidents.

### **I. Reports Involving Minors**

Webb is also committed to the prevention of child abuse. Child abuse includes both the physical and sexual abuse of minors under the age of eighteen. All Webb employees are directed to bring all reasonable suspicions, beliefs, and allegations of child abuse immediately to the attention of the Title IX Coordinator, who will then make the appropriate report to the New York State Child Abuse Hotline (State Central Register). Reports can be made directly to the Child Abuse Hotline at (800) 342-3720. Additional information about reporting is available at <http://ocfs.ny.gov/main/cps/>.

## **C. CONFIDENTIALITY**

Webb understands that an individual who has been the victim of sexual misconduct may wish to talk about the incident with the assurance that the discussion will be completely confidential. Webb employees have varying levels of responsibility to maintain confidentiality. However, even Webb offices and employees who cannot guarantee confidentiality will maintain an individual's privacy to the greatest extent possible. The information provided to



non-confidential resources will be relayed only as necessary to the Title IX Coordinator for purposes of investigation and adjudication, and the provision of available supportive measures. The ability of Webb employees to maintain confidentiality is as follows:

## **I. Professional and Pastoral Counselors**

**Professional Counselors:** A professional, licensed counselor whose official responsibilities include providing mental health counseling to individuals, including those who act in the role of providing mental health counseling under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct and/or retaliation disclosed while acting within the scope of their license or certification to the Title IX Coordinator without the individual's permission. State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused. Dr. Michelle Stein is the professional counselor available to all Webb Students ([mstein@webb.edu](mailto:mstein@webb.edu)).

**Pastoral Counselors:** A pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling and is functioning within the scope of that recognition. A pastoral counselor is not required to report an incident of sexual misconduct and/or retaliation to the Title IX Coordinator without the individual's permission. However, a pastoral counselor acting in some other manner, such as a faculty member, is not exempt from the reporting obligations. Pastor Dave Collins is the pastoral counselor available to the Webb community ([dhcollins1@yahoo.com](mailto:dhcollins1@yahoo.com)).

## **II. Requests for Confidentiality**

If a Complainant wants a report to remain confidential, such that the Complainant's identity will not be disclosed to the Respondent and chooses not to file a complaint or formal complaint, the Complainant may nonetheless receive supportive measures. A Complainant may also report the alleged incident for the purpose of receiving supportive measures, and later decide to file a complaint or formal complaint. A third party's report will not trigger an investigation, grievance process, or resolution process, unless the Complainant files or the Title IX Coordinator signs a complaint or formal complaint.

Webb will seek consent from Complainants prior to conducting an investigation. A Complainant's decline to consent to proceed may be honored, unless the Title IX Coordinator determines in good faith, that failure to investigate and adjudicate does not adequately mitigate a potential risk of harm to the Complainant or ensure the safety of other members of the Webb community, would be clearly unreasonable in light of the known circumstances, or violates state or federal law. Honoring such a request may limit Webb's ability to meaningfully investigate and pursue action against a Respondent. When determining whether the Complainant's request for confidentiality can be honored, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the reporting individual, including a Complainant, is a minor; and
- Whether Webb possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

The Title IX Coordinator has ultimate discretion to determine whether Webb will proceed when the Complainant requests otherwise. The presence of one or more of these factors may lead Webb to investigate the alleged sexual misconduct and, if appropriate, pursue disciplinary action in a manner that may require Webb to disclose the Complainant's identity to the Respondent. If Webb determines that an investigation is required, Webb will inform the Complainant and take immediate action necessary to protect and assist the Complainant. Webb will take all reasonable steps to investigate and respond to the report, complaint, or formal complaint while maintaining the Complainant's privacy to the greatest extent possible.

If, after considering these factors, Webb determines that it can honor the Complainant's request for confidentiality, Webb will nevertheless take all reasonable steps to respond to the report, complaint, or formal complaint consistent with the Complainant's request for confidentiality, and will take immediate action as necessary to protect and assist the Complainant and/or its community. If Webb honors the request for confidentiality, the Complainant must understand that Webb's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent may be limited.

### **III. Clery Act Reporting**

When reporting crimes for the purposes of Clery Act compliance, Webb will not release identifying information of the Complainant or Respondent. The Clery Act also requires Webb to issue timely warnings to the Webb community about certain crimes that have been reported and may continue to pose a serious or continuing threat to the campus community, except in those circumstance where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual or Complainant. Consistent with the Clery Act, Webb will withhold the names and personally identifying information of the reporting individual when issuing such timely warnings.

### **IV. FERPA**

FERPA permits institutions to share information with parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent's prior year federal income tax return. Generally, Webb will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

## **D. EXTERNAL REPORTING OPTIONS**

### **I. Office of Civil Rights Notification**

Individuals may also report sexual misconduct to the U.S. Department of Education's Office for Civil Rights (OCR) at <https://www2.ed.gov/about/offices/list/ocr/index.html>.<sup>17</sup>

### **II. Legal Protections and External Remedies for Employees**

Sexual harassment is not only prohibited by Webb, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal processes at Webb, employees and covered non-employees, as defined herein, may also choose to pursue legal remedies with the following governmental agencies. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

### **III. New York State Human Rights Law**

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<sup>17</sup> Please see the contact information for the OCR in Section A of Part I of this Policy.

The NYSHRL, codified as N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State with regard to sexual harassment, and protects employees and covered non-employees regardless of immigration status. A complaint alleging violation of the NYSHRL may be filed either with the Division of Human Rights (“DHR”) or in New York State Supreme Court.

Complaints with DHR may be filed any time within three years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the NYSHRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a NYSHRL complaint in state court.

Complaining internally to Webb does not extend your time to file with DHR or in court. The three years are counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney’s fees and civil fines.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

#### **IV. Civil Rights Act of 1964**

The U.S. Equal Employment Opportunity Commission (“EEOC”) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e *et seq.*). An individual can file a complaint with the EEOC anytime within 300 days<sup>18</sup> from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining Parties. Federal courts may award remedies if discrimination is found to have occurred.

An employee alleging discrimination at work, can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)) or visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

#### **V. Local Protections and the Local Police Department**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual

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<sup>18</sup> Note: this is not business days.

should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml). If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

## **E. SUPPORTIVE MEASURES, EMERGENCY REMOVALS, AND NO-CONTACT ORDERS**

### **I. Supportive Measures**

Supportive measures are non-disciplinary and non-punitive individualized services to a party, which are designed to restore or preserve equal access to Webb's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or Webb's educational environment, or deter sexual misconduct and/or retaliation under this Policy. Supportive measures can range from referral to supportive services such as counseling or medical services to class/housing/office modifications, withdrawals, leaves of absence, and no-contact orders.

Provided it has notice or it is otherwise aware of sexual misconduct and/or retaliation, before or after a complaint or formal complaint is filed, or where no complaint or formal complaint has been filed, Webb (through the Title IX Coordinator) will provide supportive measures to the Parties, as appropriate and reasonably available without fee or charge to the Parties. When offering supportive measures, the Title IX Coordinator will inform the Complainant, in writing, that they may file a complaint or formal complaint at any time.

Webb will maintain as confidential any supportive measures provided to the Parties, to the extent that maintaining such confidentiality would not impair the ability of Webb to provide the supportive measures. The Title IX Coordinator will work with the Complainant to determine their requests for supportive measures and confirm that such requests are considered.

The determination of appropriate supportive measures must be based on the facts and circumstances of that situation. Supportive measures include but are not limited to:

- Establishing restrictions on contact (no-contact orders) between the Parties;
- Providing counseling or academic support services;
- Modifications to schedules;
- Altering arrangements to work, housing, living, transportation, or other applicable situations including changes in residence hall assignments or office locations;
- Referral to counseling, medical, and/or other healthcare services;
- Providing course-related adjustments such as extensions of deadlines;
- Providing leaves of absence;
- Providing increased security and monitoring of certain areas of the campus; and/or
- Other similar measures as determined by the Title IX Coordinator.

Webb will review the facts and circumstances of each case and will implement measures in a way that does not unreasonably burden the other party. Upon written request and in accordance with Webb's policies, a student may seek prompt review of the need for or terms of supportive measures to the extent the relevant supportive measure has a direct impact on them. This request should include the basis for the request and any supporting evidence. A student may also ask for review of a request for additional supportive measures and submit evidence in support of the request. Such requests should be submitted in writing to the Title IX Coordinator. The other party will have the

right to respond to the request for review to the extent the relevant supportive measure has a direct impact on them.

## **II. Emergency Removals**

If the Title IX Coordinator, in consultation with other Webb administrators, based on an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual justifies emergency removal, including but not limited to an interim suspension, then Webb will remove such Respondent from its education program or activity on an emergency basis. In determining whether an interim suspension is appropriate based on allegations of sexual misconduct and/or retaliation, Webb will consider, *inter alia*, the following factors:

- Whether there have been other sexual misconduct and/or retaliation reports, complaints, or formal complaints about the same Respondent;
- Whether the incident involves a weapon or violence;
- Whether the Respondent has a history of arrests or disciplinary records;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether there is an increased risk that the Respondent will commit additional acts of violence.

Webb will provide the Respondent with written notice and an opportunity to challenge Webb's decision immediately following the removal. The Parties may request a review of the need for, and terms of, an emergency removal, reasonable under the circumstances, including potential modification, and may submit evidence in support of their request to the Title IX Coordinator. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond in writing and to submit evidence relevant to the request if desired.

The Title IX Coordinator has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration, if the emergency removal is to end before a determination is made by a Hearing Officer. Violation of an emergency removal under this Policy will be grounds for discipline including but not limited to expulsion/termination from Webb.

Webb may also place a non-student employee Respondent on administrative leave at its discretion and/or in accordance with federal and state laws.

## **III. No-Contact Orders**

All no-contact orders will be mutual – i.e. neither party involved will be permitted to contact the other party -- unless Webb determines, in its discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties' responsibilities.

The Parties may request a review of the need for, and terms of, the no-contact order, including potential modification, and may submit evidence in support of their request. Any such requests should be submitted to the Title IX Coordinator. The Title IX Coordinator will notify the other party and conduct a prompt review in response to such request.

Violations of a no-contact order under this Policy will be grounds for discipline, including but not limited to expulsion/termination from Webb.

## **F. STUDENTS' BILL OF RIGHTS<sup>19</sup>**

In accordance with New York State law, all students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, Complainant, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution.

## **G. STANDARD OF EVIDENCE, PRESUMPTION OF NON-RESPONSIBILITY AND BURDENS OF PROOF AND GATHERING EVIDENCE**

The standard for decisions under this Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation of this Policy occurred. There is a presumption that a Respondent is not responsible for the alleged sexual misconduct and/or retaliation until a determination is made regarding responsibility. The burden of proof as well as the burden to gather evidence sufficient to reach a determination of responsibility rests on Webb and not the Parties.

## **H. PROMPTNESS, NOTICE, AND TIMEFRAMES**

Webb will promptly resolve all reports, complaints, formal complaints, investigations, grievance processes, and resolution processes, excluding appeals, within 90 business days of the filing of a report, complaint, or formal complaint of sexual misconduct and/or retaliation with the Title IX Coordinator, unless Webb has good cause for any temporary delays or limited extensions. Good cause may include, but is not limited to, absence of a party, advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. In the case of any delays past the timeframes set forth in this Policy, Webb will provide written notice to the Parties of the delay, the reasons for the delay, and the expected resolution date. The Parties may request status updates from the Title IX Coordinator at reasonable intervals.

Webb will provide clear written notice to the Parties before every interview or other meeting they are invited or

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<sup>19</sup> To the extent applicable, students maintain the rights set forth in the Students' Bill of Rights during resolution of a complaint or formal complaint under Process A or Process B. N.Y. Educ. Law § 6440(6).

expected to attend, including the date, time, location, participants, and purpose of the investigative interview, hearing, or meeting, whose participation is invited or expected, including the Complainant and Respondent. Through the notice, Webb will provide sufficient time for the Parties to prepare to participate.

#### **I. ADVISOR OF CHOICE**

Each party may be accompanied by an advisor of their choice to any related meeting or Webb proceeding who must sign an advisor acknowledgement form, acknowledging to comply with Webb's rules. A party's advisor of choice may be, but is not required to be, an attorney. The role of an advisor is limited to observing and consulting with, and providing support to, the Complainant or Respondent. Except for cross-examination during a hearing in Process A, as described below, advisors cannot actively participate or speak on behalf of the Complainant or Respondent. Throughout the process, the role of the advisor is narrow: they may attend all meetings or interviews at which the party is entitled to be present, and may help the party prepare for each meeting, however, the Parties should anticipate to ask and respond to questions on their own account. At the request of the Complainant or the Respondent, the Title IX Coordinator will appoint to the requesting party an advisor who has been formally trained. An advisor may not direct questions to the Hearing Officer described below, or witnesses at the hearing, but may consult with the party that they are assisting in private as reasonably necessary. While the advisor may provide guidance and support, all written submissions must be authored by the Complainant or Respondent. All Webb administrators and staff will communicate directly with the Complainant or Respondent and not their advisor. The Hearing Officer will not allow an advisor's presence to inhibit the Parties' sharing of information or the conduct of the hearing.

Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process, as determined by the Title IX Coordinator. Webb reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator.

#### **J. CONFLICTS OF INTEREST, BIAS, AND TRAINING**

The Webb Title IX Coordinator, Investigators, Hearing Officers, and Appeals Panel members, as well as any person who facilitates an informal process, are trained to serve impartially and must be free from conflicts of interest and bias against Complainants or Respondents generally or an individual Complainant or Respondent. These individuals also receive training on, *inter alia*, topics set forth in Article 129-B (N.Y. Educ. Law § 6444(5)(c)(ii)) and Title IX (34 C.F.R. § 106.45 (b)(1)(iii)).

#### **K. GENERAL DISCIPLINARY CONSIDERATIONS**

Webb policies or contracts may require Webb to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in sexual misconduct and/or retaliation, which is conduct prohibited by this Policy, the investigation and grievance process or resolution process will proceed in accordance with the procedures set forth herein, except that the Hearing Officer will not impose any discipline that would require the use of additional processes. Instead, the Hearing Officer will impose all appropriate discipline that does not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. Webb's disciplinary action will be considered complete with the Hearing Officer's imposition of discipline and referral, subject to any appeals. For information, please contact the Title IX Coordinator.

#### **L. DISCIPLINARY SANCTIONS AND REMEDIES**

In grievance and/or resolution processes involving students, the Hearing Officer will be responsible for

determining disciplinary sanctions and/or remedies. In grievance and/or resolution processes involving employees, the Hearing Officer will provide a written statement regarding the determination of responsibility and a recommendation of disciplinary sanctions and/or remedies to the Director of Human Resources, Ms. Lana Miller, who will determine the appropriate disciplinary sanctions and/or remedies.

There is a broad range of possible disciplinary sanctions and remedies that Webb may implement as part of a determination of responsibility. Webb may also identify additional remedies to address the effects of the conduct on the Complainant. Thus, the range of possible remedies is broad and may include supportive measures as described above, as well as disciplinary sanctions, as described below. If a Complainant declined or did not take advantage of a specific service or resource previously offered, Webb may re-offer the service as applicable or necessary. The Title IX Coordinator may also consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. The Title IX Coordinator is responsible for effective implementation of any remedies.

The range of disciplinary sanctions that the Hearing Officer or Director of Human Resources may consider for any individual found responsible for a violation of this Policy span from a warning up to and including expulsion/termination or revocation of a student's degree. The Hearing Officer or the Director of Human Resources may impose any of the following disciplinary sanctions that are determined to be fair and proportionate to the violation of the Policy under Process A or Process B:

- Reprimand or warning;
- Modifications to schedules;
- Reassignment of housing, office, and/or transportation;
- Forfeiture of a benefit, honor, leadership position, or other privilege enjoyed by virtue of the person's membership as full- or part-time faculty, adjunct faculty, staff, or administration, or student;
- Demotion or forfeiture of promotion or salary increase;
- Reassignment of Webb employment;
- Restitution;
- Disciplinary probation;
- Revocation of honors or awards;
- Restriction of Respondent's access to Webb facilities or activities;
- Community service;
- Issuance of a No-Contact Order to the Respondent or requirement that such an order remain in place;
- Dismissal from, limitation on, or reassignment of Webb employment;
- Suspension (limited time or indefinite, with or without pay (for employees));
- Expulsion;
- Training; and/or
- Revocation of degree.<sup>20</sup>

In addition, Webb reserves the right to withhold a student's diploma where a report of sexual misconduct and/or retaliation is pending. It may also revoke any degree awarded for an individual who is found to have engaged in sexual misconduct and/or retaliation prior to conferral of a degree.

In determining appropriate disciplinary sanctions, the Hearing Officer may consider any record of past violations of Webb policies, including the nature and severity of such past violation(s),<sup>21</sup> as well as previous disciplinary

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<sup>20</sup> This is not an exhaustive list.

<sup>21</sup> Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines disciplinary sanctions. N.Y. Educ. Law § 6444.



action of any kind involving the Respondent may be considered in determining an appropriate disciplinary sanction upon a determination of responsibility. This information is only considered at the disciplinary sanction stage of the process. As part of the deliberations, the Hearing Officer will also consider whether the Respondent poses a continuing risk to the Complainant and/or the Webb community. Webb will implement disciplinary sanctions and remedies when the determination regarding responsibility becomes a final determination, as defined above.

#### **M. TRANSCRIPT NOTATIONS**

In accordance with Article 129-B of the New York State Education Law, if a student is found responsible through Webb’s conduct process for a crime(s) of violence, including, but not limited to sexual misconduct, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), Webb will make one of the following notations on the transcript of such student: “suspended after a finding of responsibility for a code of conduct violation”; or “expelled after a finding of responsibility for a code of conduct violation. If a student withdraws from Webb while such conduct charge(s) is pending and declines to complete the disciplinary process, Webb will note on the student’s transcript that they “withdrew with conduct charges pending.”

The academic records of students that have been found to have violated this Policy will be handled in accordance with Webb’s [Policy and Procedure for Transcript Notation](#). This Policy is posted on Webb’s website and a written or electronic copy can be obtained from the Registrar.

#### **N. APPEALS**

Either party may appeal a determination regarding responsibility reached under Process A or Process B, a dismissal of a complaint or a formal complaint, or any allegations therein, on any of the following bases: (1) a procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and (3) the Title IX Coordinator, Investigator, and/or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Within 5 business days of the delivery of the written determination of responsibility or from dismissal of the complaint or formal complaint or any allegations therein, the Respondent and/or Complainant may file an appeal with the Title IX Coordinator. The appeal must contain the party’s grounds for the appeal. The appealing party may also submit a written statement challenging the outcome. The Title IX Coordinator will promptly notify the non-appealing party about the appeal in writing and will implement appeal procedures equally to the Parties. Within 5 business days from the notification of the appeal, the non-appealing party may submit a written statement in response and in support of the outcome. Regardless of whether all Parties request an appeal, the Complainant and Respondent will be made aware of, and permitted to participate in, the appeal as it will be the only appeal conducted and its conclusion will be final. Where the Complainant and Respondent each request to appeal on different grounds, those grounds will be consolidated into one appeal process.

If warranted, a panel consisting of three (3) trained members of Webb, the “Appeals Panel,” will review the appeal. The Appeals Panel shall not include the Title IX Coordinator, Investigator, or Hearing Officer. The Appeals Panel shall be fair and impartial and will not include individuals with a conflict of interest. The Appeals Panel will simultaneously issue a written decision to the Parties describing the result of the appeal and the rationale for the result within 10 business days of receipt of the complete record, including the Parties’ written submissions. This decision is final.

## **PART IV: PROCESS A—INVESTIGATIVE PROCEDURES AND GRIEVANCE PROCESSES**

Process A applies only to qualifying allegations of Title IX sexual harassment as defined above in Section C of Part II. If a dismissal of a formal complaint occurs under Process A, please see Process B, if applicable. Process B may also apply to Title IX sexual harassment if the Title IX Coordinator determines that the allegations fall outside the jurisdiction of Process A.

Under Title IX, Webb's response to reports or formal complaints of sexual harassment must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a Respondent.

### **A. FORMAL COMPLAINTS**

Reports of Title IX sexual harassment may be made using any of the following options as set forth in Section A of Part II. A formal complaint may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section A of Part I. Webb will promptly investigate formal complaints and follow a grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a Respondent with the Title IX Coordinator or if the Title IX Coordinator signs such a formal complaint. The Complainant must be participating in or attempting to participate in Webb's education program or activity at the time the formal complaint is filed alleging Title IX sexual harassment against a Respondent and requesting that Webb investigate the allegations.

If the Complainant files the formal complaint, the formal complaint must contain the Complainant's physical or digital signature or provide an indication that the Complainant is the individual filing the formal complaint. The Title IX Coordinator may also sign a formal complaint. However, where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the formal complaint. The Complainant reserves the right to withdraw a formal complaint or their involvement in Webb's investigation or grievance process at any time.

#### **I. Dismissal of Formal Complaints**

Webb *must* dismiss a formal complaint or any allegations therein, if, at any time during the investigation or hearing, it is determined that: (1) the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in 34 C.F.R. § 106.30 even if proved; (2) the conduct did not occur in Webb's education program or activity; (3) the conduct did not occur against a person in the United States; or (4) at the time of filing a formal complaint, the Complainant was not participating in or attempting to participate in Webb's education program or activity. Such dismissal does not preclude Webb from acting under Process B of this Policy or another Webb policy. The Title IX Coordinator will determine whether a formal complaint must be dismissed in accordance with this section.

Webb *may*, in its discretion, dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing: (1) the Complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the formal complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed by Webb; or (3) specific circumstances prevent Webb from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

In the event of the dismissal of a formal complaint, the Title IX Coordinator will promptly and simultaneously send the Parties written notice of the dismissal and the reasons for such dismissal. The Parties may appeal the decision

to dismiss a formal complaint or any allegations therein under the procedures for appeal set forth below. The Parties are still entitled to supportive measures, even if the formal complaint is dismissed.

## **II. Consolidation of Formal Complaints**

Webb may consolidate formal complaints regarding allegations of Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX sexual harassment arise out of the same facts or circumstances.

### **B. INITIAL NOTICE OF ALLEGATIONS**

Upon receipt of a formal complaint of Title IX sexual harassment, the Title IX Coordinator will provide written notice to the Parties who are known. The notice will include:

- Notice of Webb's formal grievance process, including any informal grievance process;
- Notice of the allegations of sexual harassment potentially constituting Title IX sexual harassment, as well as sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
  - Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment under 34 C.F.R. § 106.30, and the date, location, and factual allegations of the alleged incident, if known;
- The specific section(s) of this Policy alleged to have been violated;
- A statement about Webb's prohibition on retaliation;
- A description of the range of possible disciplinary sanctions and remedies or a list of the possible disciplinary sanctions and remedies that Webb may implement following any determination of responsibility;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process;
- A statement that informs the Parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement informing the Parties that they may inspect and review the evidence collected in an investigation; and
- A statement informing the Parties that this Policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

During the course of the investigation, Webb may investigate allegations about the Parties that are not included in the initial written notice of allegations. If this is the case, Webb will provide additional allegations to the Parties whose identities are known.

### **C. INFORMAL GRIEVANCE PROCESS**

At any time prior to reaching a determination of responsibility, Webb may offer the Parties the option to resolve the formal complaint through the informal grievance process without completing a full formal grievance process. However, Webb will only offer an informal grievance process if it determines, in its sole discretion, that such informal grievance process may be appropriate, and after Webb has obtained the Parties' voluntary, written consent to the informal grievance process. An informal grievance process may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The Title IX Coordinator will be responsible for determining whether the informal grievance process is appropriate by assessing the totality of the circumstances including, but not limited to, the severity of the alleged Title IX sexual harassment,

the Parties' wishes, and the potential risks to the Webb community. Webb will promptly resolve an informal grievance process within 30 business days of the filing of a formal complaint of Title IX sexual harassment with the Title IX Coordinator.

The informal grievance process may not be used: (i) to resolve an allegation of Title IX sexual harassment unless a formal complaint is filed; or (ii) to resolve an allegation of Title IX sexual harassment against a Webb employee where the Complainant is a student.

In order to proceed with the informal grievance process, the Title IX Coordinator must provide the Parties with written notice disclosing: (i) the allegations; (ii) the requirements of the informal grievance process, including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal grievance process and resume the formal grievance process with respect to the formal complaint; and (iii) any consequences resulting from participating in the informal grievance process, including the records that will be maintained or could be shared.

The Title IX Coordinator and/or their designee will serve as the facilitator(s) of the informal grievance process and may elect to be assisted by another member of the senior staff of Webb or outside expert. The informal grievance process is designed to obtain an expedient, mutually acceptable solution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, without the necessity of conducting a formal grievance process. The informal grievance process may result in the imposition of protective actions agreed upon by the Parties, or (with or without such agreement) based on information derived from the informal grievance process taken together with any other relevant information known to Webb at the time of the informal grievance process.

Participation in the informal grievance process is voluntary. Webb will not compel the Parties to engage in the informal grievance process and will allow the Parties to withdraw from the informal grievance process at any time and resume the investigation and formal grievance process with respect to the formal complaint. There is no appeal option after the Parties reach a resolution through informal means.

#### **D. INVESTIGATION OF FORMAL COMPLAINTS**

The Title IX Coordinator and/or their designee will either conduct the investigation or will appoint a trained investigator(s) to conduct the investigation (the "Investigator"). A party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator(s) at any time. If the Investigator is the Title IX Coordinator, the party may contact the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)). Formal complaints of Title IX sexual harassment will be investigated promptly, thoroughly, and impartially by the Investigator, and normally within 45 business days of filing a formal complaint with the Title IX Coordinator.

Investigations generally include interviews with the Parties and witnesses, as well as follow up interviews, if necessary. The Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, such as documents, communications, photographs, and other evidence. Parties and witnesses are expected to provide all available relevant evidence to the Investigator. The Parties will have the ability to discuss the allegations under investigation and gather and present relevant evidence. The Parties will have an equal opportunity to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint.

Unless the Investigator obtains a party's voluntary, written consent, the Investigator will not access, consider,

disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in such capacity, and which are made or maintained in the connection with the provision of treatment to the party. In addition, Webb will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognizable privilege, unless the person holding such privilege has waived the privilege.

At the conclusion of the investigation, the Investigator will prepare a case file, which will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which Webb does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The Investigator will also prepare an investigative report that fairly summarizes the investigation and all relevant evidence. Prior to completion of the investigative report, the Investigator will send to each party and party's advisor, if any, the case file, subject to review in an electronic format or hard copy.<sup>22</sup> The Parties will have 10 business days to submit a written response. The Investigator will consider the written responses before completing the investigative report.

The Investigator will finalize the investigative report that summarizes relevant evidence and, at least 10 business days prior to the hearing, send the investigative report to each party and the party's advisor, if any, in an electronic format or hard copy, for their review and written response. The Parties and their advisors, if any, will be provided with the other party's written response to the investigative report, if any, in electronic format or hard copy prior to the hearing.

## **E. THE HEARING**

### **I. The Hearing Officer**

After the investigative report is shared with the Parties, the Title IX Coordinator will assign the matter to be heard by the Hearing Officer who is chosen from a group of specially trained Webb personnel. The Title IX Coordinator may determine that an individual(s) external to Webb will be assigned as the Hearing Officer. The assigned Hearing Officer will not participate in the process until this stage of the proceeding.

### **II. Hearing Process**

A live hearing is required as part of this process. The hearing cannot take place less than 10 business days from the conclusion of the investigation, which is when the final investigative report is provided to the Parties. The Title IX Coordinator will provide written notice of the hearing to the Parties at least 5 business days before the hearing date. The written notice will include:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.);
- The purpose of the hearing; and
- The names and contact information of the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to change the Hearing Officer at any time.

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<sup>22</sup> Whether included as relevant in the investigative report or not, Webb will make all directly related evidence subject to the Parties' inspection and review available at any hearing to give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

### **III. Conduct of the Hearing**

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, Webb will provide the Parties with written notice explaining the reason for such change. Webb will create an audio or audiovisual recording, or transcript, of all live hearings under this Policy and will make it available to the Parties for inspection and review.

The Hearing Officer may consider all evidence that they determine is relevant. The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor. During the hearing, the Parties may: speak on their own behalf, including providing an opening and closing statement; be accompanied by an advisor, who may be, but is not required to be, an attorney; have an advisor cross-examine the other party and any witnesses; and the opportunity to attend the entire hearing, except for the deliberation phase. The Hearing Officer will determine the order of Parties and witnesses and answer any procedural questions. During any hearing, Webb will make all directly related evidence available for the Parties' inspection and review to give each party an equal opportunity to refer to the evidence.

Live hearings may be conducted with all Parties physically present in the same geographic location, or under the discretion of Webb, any or all Parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. The Parties may request that the live hearing occur in this manner.

### **IV. Cross-Examination**

During the live hearing, cross-examination will be conducted directly, orally, and in real time by the party's advisor and never by a party personally. At no point shall the Parties be entitled to question the other. If a party does not have an advisor present at the live hearing, Webb will provide such party, without fee or charge, an advisor of Webb's choice, who may be, but is not required to be an attorney, to conduct cross-examination on behalf of that party.

At the live hearing, the Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility of the opposing party or any witnesses. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer shall determine whether the question is relevant and explain any decision to exclude a question as not relevant. Once the Hearing Officer determines the relevance of the question, the Hearing Officer will allow or preclude the question.

The Hearing Officer will limit or preclude any irrelevant questions. The Hearing Officer's determination that a question is not relevant is made by applying logic and common sense. The Hearing Officer is not required to give a lengthy or complicated explanation; it is sufficient, for example, for the Hearing Officer to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions outlined below, is duplicative, or because the question asks about a detail that is not probative of any material fact concerning the allegations.

The Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. The Parties also have the right to exclude their own prior sexual history with persons other than the other party in the judicial or conduct process, subject to the exceptions in 34 CFR § 106.45(6)(i), which states that questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence are (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (2) 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.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer shall not rely on any statement of that party or witness in reaching a determination of responsibility. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

## **V. Impact Statements**

Within 5 business days of the conclusion of the hearing, the Parties will be given access to the record of the hearing and offered an opportunity to provide impact statements to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer or Director of Human Resources while they are deliberating on appropriate disciplinary sanctions, if any. Impact statements cannot and will not be considered by the Hearing Officer or Director of Human Resources when reaching a determination of responsibility. The impact statement may be no longer than five (5) singled-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The impact statement may not seek to introduce new evidence.

## **F. DETERMINATIONS REGARDING RESPONSIBILITY**

The Hearing Officer will evaluate the allegations under a "preponderance of the evidence" standard. The Respondent will be found to be responsible for the alleged Title IX sexual harassment if the Hearing Officer concludes, based upon careful review of all information presented, that such Title IX sexual harassment more likely than not occurred. If the Hearing Officer determines that the Respondent committed a violation of this Policy, it will determine disciplinary sanctions and/or remedies when the Respondent is a student. When the Respondent is an employee, the Hearing Officer will provide a written statement of such determination of responsibility and a recommendation for disciplinary sanctions or other appropriate measures to the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)). The Title IX Coordinator will implement any remedies. Please see above Section L of Part III, which sets forth the range of possible disciplinary sanctions and remedies that may be implemented.

### **I. Written Notice of Determination**

Within 7 business days from the hearing, the Hearing Officer will simultaneously issue a written notice of its determination regarding responsibility to the Parties. The written notice of determination will contain the following information:

- Identification of the conduct constituting Title IX sexual harassment under this Policy as defined in 34 C.F.R. § 106.30;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including:
  - A determination regarding responsibility;
  - Any disciplinary sanctions Webb will impose on the Respondent; and
  - Whether remedies will be provided to the Complainant;
- Webb's procedures and permissible bases for the Parties to appeal; and
- When the determination becomes final.

Webb will implement disciplinary sanctions and remedies when the determination becomes final. The determination regarding responsibility becomes a final determination on the date that Webb provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section N of Part III.*



## **PART V: PROCESS B—INVESTIGATIVE PROCEDURES AND RESOLUTION PROCESSES**

Process B is a prompt and equitable resolution process, which applies when the Title IX Coordinator determines that Process A does not, or when violations of this Policy that would be subject to Process A have been dismissed. If the Title IX Coordinator determines that Process A applies, then Process A must be applied and not Process B. Process B applies to all allegations of sexual misconduct and retaliation under this Policy, including allegations of sexual harassment that do not constitute Title IX sexual harassment, as well as allegations of discrimination or harassment, such as sex/gender-based discrimination or harassment that do not qualify as Title IX sexual harassment involving students, employees, or third parties.

Any employee or non-student who, after appropriate process, has been found to have violated this Policy, will be subject to disciplinary action, which may include reprimand, suspension from service for a stated period, with or without pay, termination of employment, or such other responsive actions deemed appropriate for the violation. Any student who, after an appropriate investigation, has been found to be in violation of this Policy, will be subject to disciplinary action, which may range from a warning to expulsion, depending on the severity of the misconduct, the student's cumulative conduct record, institutional precedent, and other mitigating or aggravating circumstances.

### **A. COMPLAINTS**

Reports may be made using any of the options set forth in Section A of Part III. A complaint is a document filed by the Complainant or signed by the Title IX Coordinator alleging sexual misconduct and/or retaliation by a Respondent and requesting that Webb investigate the allegation(s). If a Complainant files or the Title IX Coordinator signs a complaint, Webb will initiate its complaint process, including investigation into the Complainant's allegations. A complaint may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section A of Part I. Once a complaint or notice is received, it will be reviewed by the Title IX Coordinator.

To ensure a prompt and thorough investigation of a complaint, the Complainant should provide as much of the following information as possible:

- Name, department, and position of the person allegedly engaged in the sexual misconduct and/or retaliation;
- Description of the incident, including the date, location, and the identity of any witnesses;
- If the Complainant is an employee, the alleged effect of the incident on the Complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of employment;
- If the Complainant is a student, the alleged effect of the incident on the Complainant's academic standing, housing environment, or other terms or conditions of the educational environment;
- Any other information the Complainant believes relevant to the sexual misconduct and/or retaliation.

The Complainant reserves the right to withdraw a complaint or their involvement in Webb's investigation or resolution process at any time. However, in such instances, Webb's ability to respond will be limited and Title IX may nevertheless require Webb to complete the investigation processes.

Dismissal of a complaint from the Process B resolution process does not preclude action under another provision of Webb's policies and/or handbooks. If a complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons therefore to the Parties. Further, Webb may consolidate complaints regarding allegations of sexual misconduct and/or retaliation against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

Upon the filing of a complaint, the Title IX Coordinator will promptly contact the Complainant and provide the Complainant a general understanding of this Policy, as well as identify the Complainant's rights and any available supportive measures, if the Title IX Coordinator had not already done so. The Title IX Coordinator will also seek to determine how the Complainant wishes to proceed.

As indicated in Section C of Part III of this Policy, Webb will seek the Complainant's consent prior to initiating an investigation and the Complainant's decline to consent will be honored unless Webb determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Complainant or other members of the Webb community as detailed above in Section C of Part III.

If the Complainant wishes to proceed with either formal or informal resolution, or Webb believes it is otherwise necessary, the Title IX Coordinator will notify the Respondent that a complaint has been filed and provide the date, time, location, and factual allegations concerning the alleged violation, a reference to the specific Policy provisions that have been violated, Webb's retaliation prohibition, and possible disciplinary sanctions. The Title IX Coordinator will provide the Respondent with a general understanding of this Policy, identify any available supportive measures, and inform the Respondent that they may have an advisor of their choice, who may be, but is not required to be, an attorney.

## **B. INVESTIGATION**

The investigation of a complaint will be conducted in an impartial, prompt, thorough, fair, timely, and respectful manner. The Title IX Coordinator and/or their designee will either conduct the investigation or appoint an appropriately trained investigator(s) to conduct the investigation (the "Investigator"). The Title IX Coordinator may also utilize a trained individual who is external to Webb to conduct the investigation. A party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator at any time. If the Investigator is the Title IX Coordinator, the party may contact the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)).

The investigation is a neutral fact-finding process and will be conducted within a reasonable amount of time and will normally be completed within 45 business days. The Investigator(s) will make every effort to keep the Complainant and the Respondent informed, on a timely basis, about the status of the investigation. During all phases of the resolution process, the Parties will be provided with advance notice of any meeting they are required or eligible to attend.

The investigation will be conducted in a manner that is adequate, reliable, and impartial and may include any of the following:

- Interviews of the Complainant and the Respondent;
- Interviews of any witnesses;
- Interviews of individuals who may have observed the alleged misconduct or may have other relevant knowledge; and
- Gathering of any other relevant information, including, but not limited to, medical records, surveillance video, cell phone and other electronic records, and other evidence.

Each party will have an equal opportunity to submit evidence, identify witnesses, and submit questions that should be directed by the Investigator(s) to the other party or to any witness, if deemed appropriate. The investigator(s) will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct

and/or retaliation.

Webb cannot access, consider, disclose, or otherwise use in the formal grievance process a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Webb obtains voluntary, written consent from that party (or, if the party is not an eligible student, that party's parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege

Within 10 business days of the investigation's completion, the Investigator(s), if the Investigator(s) is someone other than the Title IX Coordinator, will provide a written report to the Title IX Coordinator. The Complainant and Respondent will each have an opportunity to review, but not copy, the investigative report in the presence of a Webb official. In response to the investigative report, both the Complainant and the Respondent will be given the opportunity to submit a written statement. The written statement must be submitted at least 10 business days prior to the hearing date, if any.

### **C. INFORMAL RESOLUTION PROCESS**

Certain complaints of sexual misconduct and retaliation can be resolved through an informal resolution process. These informal resolution processes may include, but are not limited to, an informal investigation, mediation, counseling, and/or any other means of resolving a complaint other than a formal resolution process. The use of the informal resolution process is voluntary and must be agreed to by the Complainant, the Respondent, and the Title IX Coordinator. Either the Complainant or the Respondent may end an informal resolution process at any time and choose to pursue the formal resolution process, or the Complainant can choose not to pursue the matter further.

The assigned facilitator(s) will meet with the Complainant to discuss the complaint and the process. The facilitator(s) will explain to the Complainant the nature of the informal resolution process, and, if acceptable to the Complainant, the facilitator(s), whenever possible, appropriate and safe, will attempt to resolve the problem or complaint through an informal resolution process. The Complainant will not be required to meet with the Respondent individually or face to face. The informal resolution process attempts to resolve the issue with the Complainant and the Respondent by mutual agreement, which will be finalized in writing. Once a mutually agreed upon resolution is suggested, it will be reviewed, accepted, or modified by the Title IX Coordinator.

Once the recommendation for the informal resolution process is approved, written notification will be prepared promptly by the Title IX Coordinator. If either party is dissatisfied with the approved resolution, either may make a request within 7 business days of issuance of the written notification for formal resolution proceedings. If the Parties can reach a mutually satisfactory resolution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, and no request for formal resolution is filed within this time period, the matter will be considered final without formal resolution. There is no appeal.

In cases involving employees, all mutually agreed upon resolutions are subject to the approval of the Director of Human Resources. After review of a proposed resolution, the Director of Human Resources will issue an outcome letter to the employees, with a copy to the Title IX Coordinator.

### **D. FORMAL RESOLUTION PROCESS**

The formal resolution process involves a hearing before a Hearing Officer who is chosen from a group of trained members of Webb's administration. Hearing Officers receive training, at least annually, on the issues relating to sexual misconduct. They will also be trained regarding how to conduct a hearing process that protects the safety of

Complainants, the due process rights of Respondents, and promotes accountability. Where circumstances warrant, the Title IX Coordinator may determine that an individual external to Webb will be assigned as a Hearing Officer. Within 5 business days of receiving the investigative report, the Title IX Coordinator will select the Hearing Officer.

## **I. Notice**

Webb will provide written notice at least 5 business days before the hearing date to both Parties, stating the date, time, place of the hearing, and the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receiving the written notice. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will then determine whether the party's objection has merit and review the appointment of the Hearing Officer to reassess whether the member will handle complaints impartially and objectively. If the party's claim has merit or if there is a conflict of interest where the member cannot be impartial, a different Hearing Officer will be appointed by the Title IX Coordinator to preside over the hearing.

## **II. Hearing Procedures**

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the Title IX Coordinator will provide the Parties with written notice explaining the reason for such change. The Title IX Coordinator will arrange for the hearing to be recorded. The Complainant and the Respondent have the right to be present at the hearing and may be accompanied by their respective advisors, but neither party (nor their respective advisors) will be permitted to cross-examine the other or any third-party witness at any time during the hearing process. Either party may request alternative methods of participating in the hearing, including through electronic means, if the party does not wish to be in physical proximity of the other party.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Hearing Officer will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. All Parties will have the opportunity to present facts and arguments in full and written questions for all witnesses involved in the hearing. The Hearing Officer will review in advance of the hearing all the written materials provided

Only the Hearing Officer may question the individual Parties and any witnesses unless permission is granted to modify the questioning process. The Complainant and Respondent will have the opportunity to suggest questions of the other party and/or of any witness. The Complainant and Respondent must submit suggested questions to the Hearing Officer in writing. The Hearing Officer reserves the right to decline to ask questions submitted by a party where it determines that the information sought is not relevant to the process.

In general, any information or questioning about the prior sexual history of the Complainant or Respondent with individuals other than the other party is precluded and will not be admitted as evidence at the hearing. Additionally, any information or questioning about either party's mental health history diagnosis and/or treatment is precluded and will not be admitted into evidence at the hearing. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines disciplinary sanctions. After all witnesses have been questioned, each party may make a closing statement.

In order to comply with the FERPA 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, Webb will not disclose documents prepared in anticipation of the hearing or documents, testimony, or other information introduced at the hearing, or any notes taken at the hearing itself to anyone outside of the hearing proceedings, except as may be required or authorized by law and/or Webb policy.

### **III. Impact Statements**

Within 5 business days of the conclusion of the hearing, the Parties will be given access to the record of the hearing and offered an opportunity to provide an impact statement to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer or Director of Human Resources while they are deliberating on the appropriate disciplinary sanctions. Impact statements cannot and will not be considered by the Hearing Officer or Director of Human Resources when reaching a determination of responsibility. The impact statement may be no longer than five (5) singled-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The impact statement may not seek to introduce new evidence.

### **IV. Determination Regarding Responsibility**

The Hearing Officer will evaluate evidence under a preponderance of the evidence standard. A preponderance of the evidence means that the Hearing Officer, after careful consideration of the evidence, has determined that it is more likely than not that the Respondent violated this Policy. The Hearing Officer will evaluate the evidence and will prepare a written statement explaining the findings and the evidence supporting those findings. If the Hearing Officer determines that the Respondent committed a violation of this Policy, it will determine disciplinary sanctions and/or remedies when the Respondent is a student. When the Respondent is an employee, the Hearing Officer will provide a written statement of such determination of responsibility and a recommendation for disciplinary sanctions or other appropriate measures to the Director of Human Resources, Ms. Lana Miller ([lmiller@webb.edu](mailto:lmiller@webb.edu)). The Title IX Coordinator will implement any remedies. Please see above Section L of Part III, which sets forth the range of possible disciplinary sanctions and remedies that may be implemented.

The Complainant and Respondent will simultaneously be informed, in writing, of the Hearing Officer's decision, including any disciplinary sanctions imposed and the rationale for the decision. The Hearing Officer will endeavor to issue a decision within 10 business days of the completion of the hearing.

Webb will implement disciplinary sanctions and remedies when the determination becomes final. The determination of responsibility becomes a final determination on the date that Webb provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section N of Part III.*

## Appendix A



### Complaint Form for Reporting Sexual Harassment

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to:

The Dean Matthew R. Werner at

Email: mwerner@webb.edu, Phone: 516-671-2215 x 1110

You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, please contact the Director of Human Resources, the President, the Dean or an Department Director. Webb Institute will complete this form on your behalf, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

#### COMPLAINANT INFORMATION

Your Name: \_\_\_\_\_

Work Address: \_\_\_\_\_

Work Phone: \_\_\_\_\_

\_\_\_\_\_

Job Title: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_

Select Preferred Communication Method:    Email    Phone    In person

#### COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Work Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Relationship to you: Supervisor    Subordinate    Co-Worker    Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

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3. Date(s) sexual harassment occurred: \_\_\_\_\_

Is the sexual harassment continuing?  Yes  No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

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*The last question is optional but may help the investigation.*

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

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If you have retained legal counsel and would like us to work with them, please provide their contact information.

*Signature:* \_\_\_\_\_

*Date:* \_\_\_\_\_