

# Policy on Title IX and other gender-based misconduct

## STATEMENT OF PURPOSE

This policy addresses discrimination on the basis of sex (actual or perceived), gender, gender identity, gender expression, sexual orientation, and sexual identity. Keene State College does not discriminate on the basis of sex in its education programs or activities. The College is required by Title IX of the Education Amendments of 1972, the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in May 2020, and other State and Federal laws not to discriminate in such a manner. The requirement not to discriminate on the basis of sex in an education program or activity extends to admission and employment.

All faculty, staff, students, volunteers, and other members of the College community are expected to comply with the provisions in this Policy, which:

- Defines Prohibited Conduct including relationship violence (dating violence and domestic violence), sexual misconduct (including sexual harassment and sexual assault), stalking, and retaliation prohibited by the College and Title IX.
- Provides contact information for confidential and other resources available to all individuals.
- Explains equitable supportive measures that may be offered to all parties.
- Explains the process for responding to and addressing reports and Formal Complaints of Prohibited Conduct, including retaliation.
- Sets expectations for College faculty, staff, and other employees on reporting conduct.

This Policy provides a fair process whether reported conduct is specifically prohibited or covered by Title IX and highlights divergences in coverage, definitions of Prohibited Conduct, and procedures. Additionally, specific Title IX definitions of Prohibited Conduct are set forth in text boxes.

Reports (verbal, in-person, in-writing, electronic, or other means) of conduct prohibited by this Policy are reviewed by the College's Title IX Office or its designee.

## COORDINATION WITH NON-DISCRIMINATION POLICY

Title IX Prohibited Conduct can occur in conjunction with other forms of sexual misconduct or misconduct related to an individual's actual or perceived protected identity. Targeting individuals on the basis of protected identity may constitute a violation of the College's community standards, this Policy, and/or the College's Non-Discrimination Policy. When reports of Title IX Prohibited Conduct include allegations that community members may have been targeted for or subjected to misconduct because of their actual or perceived protected identity, the College will, so long as it is possible under federal law, coordinate the investigation and resolution efforts. Formal Complaints that allege behaviors that are prohibited both by this Policy and other College policies may, but will not necessarily be, investigated and resolved in a consolidated manner. Discrimination that does not also involve harassment based upon sex (actual or perceived), gender, gender identity, gender expression, sexual orientation, or sexual identity will be reviewed under the Non-Discrimination Policy.

## PROHIBITED CONDUCT

The following section sets forth conduct that is strictly prohibited by Keene State College. The College prohibits sexual harassment as defined by Title IX as well as relationship violence, sexual misconduct, and stalking as defined herein.

- This Policy uses the term “relationship violence” as a broad term denoting domestic violence and dating violence; “sexual misconduct” as a term that includes sexual assault, sexual harassment, and sexual exploitation; and stalking.
- Title IX: Additionally, the College prohibits sexual harassment (which includes sexual assault, domestic violence, dating violence, and stalking) as specifically defined by the Title IX Final Rule of 2020.

**Sexual Harassment:** A form of discrimination that includes verbal, written, or physical behavior, directed at someone because of that person’s sex (actual or perceived), gender, gender identity, gender expression, actual or perceived sexual orientation, sexual identity, or based on gender stereotypes, when that behavior is unwelcome and meets any of the following criteria:

- Submission or consent to the behavior is reasonably believed to carry consequences, positive or negative, for the individual’s education, employment, living environment, or participation in a College activity or program. This can also be referred to as “quid pro quo.” Examples of this type of sexual harassment include: (1) submission to or rejection of such behavior by an individual is used as a basis for employment or academic decisions affecting that individual; or (2) submission to such behavior is made either explicitly or implicitly a term or condition of an individual's employment or academic work; or
- The unwelcome behavior is so severe or pervasive that a reasonable person would find that it: alters the terms or conditions of a person’s employment or educational experience; or unreasonably interferes with an individual’s work or performance in a course, program, or activity, thus creating a hostile or abusive working or educational environment. This can be referred to as “hostile environment.” Examples of this type of sexual harassment include but are not limited to:
  - Unwelcome sexual advances or requests for sexual favors;
  - Unwelcome commentary, including but not limited to drawings, written statements, social media posts, or verbal statements, about an individual’s body, genitals or sexual activities;
  - Unwelcome teasing, joking, or flirting based on actual or perceived gender identity, gender expression, or sexual identity/orientation; and
  - Verbal abuse of a sexual nature or based upon gender, gender identity, gender expression, sexual identity, sexual orientation, or gender stereotypes.

Behaviors or communications may be verbal or nonverbal, written, or electronic. Such conduct does not need to be directed at or to a specific individual in order to constitute sexual harassment but may consist of generalized unwelcome and inappropriate behaviors or communications based on sex, gender identity, sexual identity, gender expression, actual or perceived sexual orientation, or gender stereotypes.

Determination of whether reported conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the reported incidents occurred. Sexual harassment is often a pattern of offensive behaviors. A single incident may also constitute sexual harassment, depending on

the severity of the conduct and on factors such as the degree to which the conduct affected the educational experience, the individual's work or academic environment; the type of conduct; and the relationship between the Parties.

The protections of the First Amendment are carefully considered in all reports involving speech or expressive conduct. The fact that speech or expressive conduct is offensive is not, standing alone, a sufficient basis to establish a violation of this policy. Students and faculty in an educational environment have robust speech rights, including the right to freely examine, exchange, and debate diverse ideas. Speech or expressive conduct that constitutes sexual harassment is neither legally protected expression nor the proper exercise of academic freedom.

A person's subjective belief alone that behavior is offensive does not necessarily mean that the conduct rises to the level of a policy violation. The behavior must also be objectively offensive.

Under Title IX, Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning a provision of aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.
2. Unwelcome conduct that is so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the College's education, program, or activity as determined by a reasonable person standard.
3. Other "sexual offenses" defined in the following statutes and described in this Policy: "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). These other sexual offenses under Title IX are defined in more detail below.

**Sexual Assault:** Sexual Assault is a broad term that includes the following Prohibited Conduct:

**Non-Consensual Sexual Contact:** The intentional touching of intimate body parts of another person in a sexual manner without consent, causing another to touch intimate body parts without consent, or the disrobing or exposing of another without consent. Intimate body parts include but are not limited to, the mouth, neck, buttocks, anus, groin, genitalia, or breast; however, sexual contact can occur with any part of the body.

This conduct is prohibited by Title IX as **fondling**.

Under Title IX, fondling means the touching of the private body parts of another person for the purpose of sexual gratification without consent.

**Non-Consensual Sexual Penetration (Attempted or Actual):** Non-consensual penetration or attempted penetration of a genital, anal, or oral opening of another person by use of an object, instrument, digit, or other body part. An "object" or "instrument" means anything other than a respondent's genitalia or other body part. This includes forcing an individual to use an object, instrument, or digit to penetrate another individual as well as oral penetration by a sex organ of another person.

This conduct is prohibited under Title IX, as defined above.

**Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

This conduct is prohibited by Title IX, as defined above.

**Statutory Rape:** Sexual intercourse, where there is no force or coercion, with a person who is under the statutory age of consent under state law.

This conduct is prohibited by Title IX, as defined above.

**Sexual Exploitation:** Taking or attempting to take non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the person being exploited. Examples include:

- In situations where an individual has a legitimate expectation of privacy, surreptitiously observing or attempting to observe another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, or in which the person observed or induced to perform such act is under 18 years of age.
- In situations where an individual has a legitimate expectation of privacy, the non-consensual recording, sharing, or streaming of images, photography, video, or audio recordings of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved, or in which the person recorded, viewed, or induced to perform such act is under 18 years of age.
- Exposing one's genitals or inducing another to expose their genitals in non-consensual circumstances, or in which the person induced to perform such act has not attained 18 years of age.
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- Contact between the intimate body parts of a person and the sexual organ of another due to the purposeful removal of a condom without express verbal consent (i.e., non-consensual condom removal or 'stealthing')
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly exposing another individual to a sexually transmitted infection or virus without the other individual's knowledge and consent.
- Arranging for others to have non-consensual sexual contact or penetration with a person.
- The recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a sex act induced by force, fraud, or coercion.

**Relationship Violence:** Relationship Violence is a broad term that encompasses domestic violence and dating violence.

**Domestic Violence:** An act of violence (actual or an attempt to cause physical injury to another) or threat to cause violence to another, committed by an individual who is a current or former spouse or intimate partner of an individual, a person with whom the individual shares a child in common, a person who is cohabitating with or has cohabited with the individual as a spouse or intimate partner.

This conduct is also prohibited under Title IX as defined below.

Under Title IX, domestic violence means assault or assault and battery to another person 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 to the victim under the domestic or family violence laws under New Hampshire state law, or by any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state.

**Dating Violence:** Violence (actual physical injury to another) or threat to cause violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

This conduct is prohibited by Title IX.

**Stalking:** Engaging in a course of conduct that is directed at a specific person or persons that would cause a reasonable person to feel fear for themselves or for the safety of others, or to suffer substantial emotional distress.

Stalking includes cyberstalking, which utilizes electronic formats such as the internet, social networks, social media apps, blogs, texts, cell phones and other devices. Stalking may include behavior that occurs outside the context of a relationship.

This conduct is prohibited by Title IX

**Retaliation:** An act or attempted act taken because of a person's participation (or expectation of participation) in a protected activity that would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: opposition to prohibited conduct; or report of prohibited conduct to the College; or participation (or reasonable expectation of participation) in any manner in an investigation, proceeding, hearing, or supportive measure under this Policy.

The exercise of rights protected under the First Amendment does not constitute prohibited retaliation. The conduct may also be prohibited by Title IX.

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 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 sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or 34 C.F.R. Part 106 constitutes retaliation.

Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, provided information, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

## HOW TO REPORT

Those impacted by Prohibited Conduct may: 1) reach out to a confidential resource (listed below) to learn about options; 2) report to local police; and/or 3) report to the Title IX Office. Those impacted may choose to report to law enforcement, to the College, to both, or to neither as the individual may choose. Keene State College will receive reports about conduct that occurs on or off campus and reserves the right to assert its jurisdiction when the conduct affects a substantial Keene State College interest.

## **Administrative Contact Information**

Complaints or inquiries about this policy and associated procedures, may be made to:

Jeffrey Maher

Title IX Coordinator

48 Butler Court Room 209

[titleix@keene.edu](mailto:titleix@keene.edu)

603-358-2010

## **Local Resources**

To discuss options, the Formal Complaint process, resources, and other supportive measures in a local, confidential setting please contact:

- [The Wellness Center – Counseling Services](#): 603-358-2437 (business hours) After hours 24/7: 603-358-2436; located in Elliot Center
- [The Wellness Center – Health Services](#): 603-358-2450 (business hours); located in Elliot Center
- [MCVP: Crisis and Prevention Center](#) 24hr confidential hotline: 1-888-511-6287 or 603-352-3782  
MCVP provides confidential crisis intervention services, including medical, legal and court advocacy, financial advocacy, crisis counseling, safety planning, and referrals to other resources. MCVP provides secondary support for an individual's friends and family. Their advocates may also be able to help victim/survivors with unbundled or pro bono legal services, financial compensation, access to food, clothing, and transportation. MCVP is oftentimes on campus facilitating prevention education and can meet students and employees on campus for support. MCVP has been designated as a Confidential Resource Advisor (CRA) as outlined in New Hampshire RSA 188-H:7.

## **Additional national resources**

- [National Sexual Assault Hotline](#) 1-800-656-4673
- [National Domestic Violence Hotline](#) 1-800-799-7233
- [The Network La Red](#) (LGTBQIA+ relationship violence hotline) 1-800-832-1901
- [Safe Horizon Stalking Hotline](#) 1-800-621-4673
- [National Human Trafficking Hotline](#) 1-888-373-7888

## **Reporting**

Complainants are also encouraged to consider reporting behavior that constitutes a crime to law enforcement authorities. Complainants may wish to pursue a criminal or civil restraining order from a local court however, individuals have a right to choose not to file a report with law enforcement or seek a restraining order. The decision to file a criminal complaint or seek a court order is a personal choice. Complainants should also understand that KSC Campus Safety is not a police force, and a report to Campus Safety is not equivalent to filing a police report. To file a police report, call 911, or contact the Keene Police Department at:

- [Keene Police Department](#): 400 Marlboro Street, Keene, NH 03431 603-357-9813

To file a report with the College, a variety of options are available:

- [KSC Sexual Misconduct/Violence Report](#) (online form)

- [Title IX Office](#): 603-358-2010
- [KSC Campus Safety](#): 603-358-2228
- [Human Resources](#): 603-358-2234

## **MEDICAL CONSIDERATIONS**

Individuals may wish to seek medical attention. Along with treatment of injuries, prompt medical examinations can test for pregnancy and STI's, and provide post exposure treatment for HIV.

A forensic examination can also secure valuable evidence that could be used later if a person wishes to involve law enforcement. Physical evidence may exist up to five (5) days, or longer, after a sexual assault or rape, though individuals are recommended to receive an examination as soon as possible. Local medical facilities can arrange to have a specially trained Sexual Assault Nurse Examiner (SANE) conduct a forensic examination, which collects evidence from a person's body, clothes, and other belongings. A trained advocate can meet a victim/survivor at the hospital to provide emotional support, which would be arranged by the hospital. The results of this examination can be provided to law enforcement anonymously. Transportation to and from a Keene, New Hampshire medical center is available through the Department of Campus Safety, if requested, by students or employees who have experienced sexual or relationship violence.

- [Cheshire Medical Center](#): 580 Court St, Keene, NH 03431: (603) 354-6600
- [Monadnock Community Hospital](#): 452 Old Street Rd, Peterborough, NH 03458; (603) 924-7191

When an individual seeks a forensic examination at a hospital, the Office of the Attorney General will pay the cost for medical expenses, including the physical examination, provided the experience is reported to the police. Other expenses related to the incident may also be provided at no cost to the individual through the [Victim's Compensation Program](#). Specific information on expenses is available through [MCVP: Crisis and Prevention Center](#).

## **AMNESTY FROM DISCIPLINARY ACTION**

Keene State College generally will grant amnesty from disciplinary action to a reporting party, whether as a Complainant, witness, or other reporting party, for the personal ingestion of alcohol or other drugs in violation of the Code of Conduct that is part of a report of Prohibited Conduct. Students should be aware that any such grant of immunity from disciplinary action by the College has no effect on actions by law enforcement agencies.

## **REPORTING OBLIGATIONS FOR RESPONSIBLE EMPLOYEES**

All employees of Keene State College (including student employees/Community Assistants), with the exception of those who exist in a legally recognized confidential relationship, are considered Responsible Employees and must promptly share with the Title IX Coordinator all known details of a report of Prohibited Conduct made to them in the course of, or resulting from, their employment. Employees are encouraged to promptly share all details of other behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

These reporting requirements increase the likelihood that a Complainant and Respondent will receive access to supportive measures, ensures that all College community members have equitable access to the resolution processes, and allows Keene State to take appropriate action consistent with its Title IX obligations and educational mission while still respecting individual agency and autonomy.

Failure of a Responsible Employee, as described above in this section, to report an incident of Prohibited Conduct is a violation of College policy and may be subject to disciplinary action. A Responsible Employee who is themselves a target of Prohibited Conduct under this policy is not required to report their own experience, though they are encouraged to do so.

### **Privacy**

Privacy means that information related to a Formal Complaint will be shared with a limited number of College employees who “need to know” in order to ensure the prompt, equitable and impartial review, investigation, and resolution of the report. In the event of a report indicating an imminent threat of harm to self or others, information will be promptly shared with the Department of Campus Safety and/or local law enforcement. All employees who are routinely involved in Title IX response receive specific training and guidance about safeguarding private information in accordance with applicable laws.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the College’s FERPA policy, except where limited or superseded by the applicable Title IX regulations (found at 34 C.F.R. Part 106).

Pursuant to USNH policy, the Title IX Coordinator or designee will provide the College President notice of any allegation of sexual misconduct involving an employee.

The College will keep any supportive measures provided to any Complainant or Respondent private, to the extent that maintaining such privacy would not impair the ability to provide such measures.

The College may also contact parents/guardians or third-parties to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the individual first before doing so.

### **Confidentiality**

For purposes of this Policy, Confidentiality should be understood in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, ordained clergy, and some sexual assault or domestic violence counselors. The College has designated individuals who are able to have legally privileged communications as Confidential Professionals who are exempt from the reporting obligations of a Responsible Employee. All other employees of the College are Responsible Employees who must inform the Title IX Coordinator of any incidents subject to this policy.

When information is shared by a Complainant with a Confidential Professional, that person cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information.

Confidential Professionals will not inform the Title IX Coordinator of an incident, unless a Complainant directs them to do so, but can still assist the Complainant in receiving other necessary protection and support, such as academic support or accommodations, disability, health, or mental health services. As a practical matter, the full availability of some of these services may be limited in certain circumstances by a Complainant’s desire for confidentiality and level of cooperation.

### **Confidential Resource Advisors**

As required by New Hampshire state law, the College has also designated Confidential Resource Advisors (CRA), who shall not be required reporters, and who shall be permitted to assist students in a confidential manner and provide appropriate resources and information, and assist any student with the reporting process, if desired.



The College has entered into a Memorandum of Understanding and has designated individuals employed by or volunteering with MCVP as CRA's. These individuals have been trained in the College complaint and resolution process.

Parties should be aware that legal privilege for communications made to CRA's under New Hampshire law applies only to communications between victims of alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a CRA in the course of that relationship. Communications made between a Party and their Advisor would typically be private as to the College but may not be legally privileged communications under New Hampshire state law.

## **SUPPORTIVE, INTERIM AND PROTECTIVE MEASURES**

- A. **Supportive Measures:** The College offers non-disciplinary, non-punitive individualized services as appropriate, as reasonably available, and without fee or charge to a Complainant or a Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed, and regardless of whether the individual chooses to file a Formal Complaint.

Supportive measures are designed to restore or preserve equal access to Keene State's education programs or activities, including but not limited to protecting the safety of all parties or the College's educational or employment environment or to deter conduct prohibited under this policy. Supportive measures will not unreasonably burden the other party.

Supportive measures may include referrals to counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; mutual no contact orders; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the campus; and other similar measures as deemed appropriate.

To the extent possible, the College will not disclose the provision of supportive measures except when necessary to provide the supportive measures.

- B. **Emergency Removal of Students:** The College may remove any student from its program or activity on an emergency basis if there is an immediate threat to the physical safety of any students or other individuals arising from allegations under this Policy. Prior to removal, the College will undertake an individualized safety and risk analysis, and, where such analysis determines a credible safety risk exists, provide the party with notice and an opportunity to challenge the decision immediately following the removal.

Additional information regarding emergency removal procedures and the appeal process may be obtained by contacting the Title IX Coordinator.

- C. **Administrative Leave of Employees:** The College may place non-student employees on administrative leave prior to or following the filing of a Formal Complaint and through final resolution of the formal grievance process. Any actions taken will be consistent with the College's right as an employer, applicable collective bargaining agreements, and State and Federal law.

## **THE RESOLUTION PROCESS**

The Resolution Process for Prohibited Conduct under this policy is the same for conduct prohibited under Title IX and conduct otherwise prohibited under this College policy. A step-by-step guide to the Resolution Process is available [HERE](#).

## **OTHER EXTERNAL REPORTING OPTIONS**

U.S. Department of Education, Office for Civil Rights,  
Boston Office  
U.S. Department of Education  
8<sup>th</sup> Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
[Email: OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

U.S. Equal Employment Opportunity Commission  
15 New Sudbury Street, Room 475  
Boston, MA 02203-0506  
Telephone: 1-800-669-4000

New Hampshire Commission for Human Rights  
2 Industrial Park Drive, Bldg. One  
Concord, NH 03301  
Telephone: (603) 271-2767  
Fax: (603) 271-6339  
E-mail: [humanrights@nh.gov](mailto:humanrights@nh.gov)

## **ADDITIONAL INFORMATION**

Charging an individual with a violation under a separate policy for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

This Policy may be updated as changes in the law dictate. To the extent that the College is subject to rules, regulations, court decisions, guidance or other laws that are different than what is stated in this Policy, those rules, regulations, court decisions, guidance, or laws will be followed.

This Policy and procedures supersede any previous policy(ies) addressing Sexual Misconduct, including Sexual Harassment, and related Retaliation and will be reviewed and updated by the Title IX Office. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

## **GLOSSARY OF ADDITIONAL TERMS AND DEFINITIONS**

**Consent:** This Policy defines consent as the voluntary, informed, knowing, unambiguous agreement to engage in mutually acceptable sexual activity through clearly communicated words or actions. Consent cannot be gained by ignoring or acting in spite of the objections of another and may be withdrawn at any time and for any reason. Consent cannot be inferred from silence, passivity, or lack of resistance alone; A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else); Consent given to another person (i.e., consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person); or Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act).

Consent cannot be obtained using physical force, violence, duress, intimidation, coercion, or the threat--expressed or implied-- of bodily injury. Consent may never be given by individuals who are incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments.

**Complainant:** A person who may have experienced prohibited conduct regardless of whether the person makes a report or seeks action under this Policy. This term does not imply pre-judgment concerning whether the person was subjected to prohibited conduct.

**Course of Conduct:** means two or more acts directed at a specific person or persons. In the context of stalking, this can include, but is not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.

**Formal Complaint:** A written document filed and signed by a Complainant (or otherwise showing that the Complainant is the one filing the document), or signed by the Title IX Coordinator, which alleges that a Respondent has engaged in Prohibited Conduct. The filing of a Formal Complaint with the Title IX Coordinator initiates the Resolution Process. Under Title IX, at the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a Program or Activity of the College. All Formal Complaints will be investigated by the College. Where the Title IX Coordinator signs a Formal Complaint, the Coordinator is not a Complainant or otherwise a party.

**Program or Activity:** Locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs. "Program or Activity" also includes any building owned or controlled by a student organization that is officially recognized by the College. "Program or Activity" broadly includes all operations of Keene State in the United States including any academic, extracurricular, research, occupations training, or other education program or activity operated by the College. It also includes computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Keene State College.

**Reasonable person:** A legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a communal ideal of reasonable behavior.

**Report:** A disclosure of any incident or concern regarding Prohibited Conduct made directly to the Title IX Coordinator, any College employee with mandatory reporting responsibilities or to any other person who then subsequently shares the information with the Title IX Coordinator.

**Respondent:** A person, registered student organization, or entity (e.g., the College, or a department, or office) that has been accused of prohibited conduct. This term does not imply pre-judgment concerning whether the person, student organization, or entity committed the prohibited conduct.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). Evidence of impairment or intoxication are insufficient alone to establish incapacitation. Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. Evaluating incapacitation also requires an assessment of whether the Respondent knew, or should have known, the reporting party was incapacitated. The impairment or intoxication of a Respondent is not a defense for misconduct and does not diminish one's responsibility to obtain consent.

## **THE RESOLUTION PROCESS**

### **RESOLUTION PROCESS OVERVIEW**

Keene State College will act on any formal or informal notice/complaint of violation of this policy (“the Policy”) that is received by the Title IX Office by applying these procedures.

The College will apply these procedures whether the conduct falls under the statutory definitions of Title IX or under other Prohibited Conduct as outlined in this Policy.

This Resolution Procedure may be used to address collateral misconduct only if it is determined to be arising from the investigation of or occurring in conjunction with reported Prohibited Conduct (e.g., retaliation, vandalism, physical abuse of another).

### **PRELIMINARY MATTERS**

#### **Disability Accommodations**

Parties to Title IX matters may request reasonable accommodations for disabilities under the applicable procedures of the College. To initiate the accommodations process, students should contact the Office of Disability Services (ODS); staff and faculty should contact the Office of Human Resources.

#### **Advisors**

The parties may have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor provided the Advisor is eligible and available. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. Choosing an Advisor who is also a witness in the process can create potential for bias and conflict-of-interest and is discouraged. The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. The College cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney. Advisors will be expected to abide by College-provided rules of decorum.

Keene State will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Keene State’s obligations to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Keene State will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

#### **Role of the Advisor**

As set out in Department of Education regulations, a party may choose whether or not to have an Advisor supporting them in all phases of the Resolution Process *except* the hearing phase. Parties must have an Advisor at a hearing. Parties who do not have an Advisor to support them at the hearing will be provided an Advisor by the College. The Advisor may not disrupt an investigatory meeting. At hearing, an Advisor

may only direct questions at the other party or witnesses as specified in this process. An Advisor may not make verbal objections or other statements of advocacy. The Advisor may consult with the party that they are assisting. The Advisor's role during the hearing process is defined in greater detail below.

### **Support Persons**

It is common to feel apprehensive or distressed during meetings relating to a complaint. Parties may select a support person of their choice to accompany them to any meetings, interviews, or hearings. A support person may provide emotional support during meetings. A support person is not an advisor, however. They cannot speak on your behalf or otherwise represent you during meetings. A Party may choose to change a support person at any time or choose to proceed without one. The support person will not be included in communications from the College or Title IX Office.

### **Communications**

All communications and notices required by these procedures may be made electronically, in hard copy, or in person.

### **Meetings with Title IX Coordinator**

Any party may request to meet with the Title IX Coordinator or designee at any point before, during, or after the process.

### **Presumption of Non-Responsibility and Standard of Evidence:**

A Respondent is presumed to be not responsible for the reported conduct until a determination regarding responsibility is made at the conclusion of the applicable formal resolution process. The presumption may be overcome only where a preponderance of the evidence supports a finding that the Respondent is responsible for violating this Policy.

### **Equitable Treatment:**

All procedures, rules, and practices adopted as part of the formal resolution process will apply equally to both parties. Parties and their Advisors will receive copies of all investigation reports and written decisions.

### **Standard of Proof:**

The standard of proof is “preponderance of evidence.” “Preponderance of the evidence standard” means that the Respondent will be found responsible if, based upon all relevant evidence, it is “more likely true than not” that Respondent is responsible for the reported conduct. If the evidence on a particular allegation is equally balanced, then that allegation is not “more likely true than not.”

### **Permissive Discussions**

This Policy does not restrict the ability of any party to discuss the allegations under investigation or to gather and present relevant evidence or present witnesses. However, parties are prohibited from discussing or disseminating the allegations in a manner that constitutes retaliation or violates FERPA. Employees may not disclose FERPA-protected information regarding students. In addition, parties should consider whether discussing allegations with a witness or another party would negatively impact a determination of the credibility of the witness or party.

### **Evidentiary Decisions**

There are limited circumstances in which prior or subsequent conduct or prior sexual history may be relied upon as evidence.

**Prior or Subsequent Conduct:** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence

of a pattern may be deemed relevant if the prior or subsequent conduct is substantially similar to the conduct under investigation.

Prior Sexual History: Questions or evidence about a Complainant's sexual history, sexual identity, and prior sexual experiences are prohibited. Questions and evidence about a Complainant's prior sexual behavior are prohibited subject to two exceptions: i) if offered to prove that someone other than the Respondent committed the reported prohibited behavior; or ii) if the question or evidence concerns sexual behavior between the Complainant and the Respondent and is offered to prove consent for the reported prohibited conduct.

### **Effect of Criminal Proceedings**

This process is independent of any criminal investigation or criminal proceeding. The College will not wait for the conclusion of any criminal investigation or proceeding to commence its own review, investigation, and, when applicable, proceedings outlined herein. Neither law enforcement's determination whether or not to indict and/or prosecute a Respondent nor the outcome of any criminal prosecution are determinative of whether the Respondent is responsible for violating College policy.

### **INITIAL ASSESSMENT**

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

- If notice is given, the Title IX Coordinator determines if the person impacted wishes to make a Formal Complaint.
- If the impacted person does not wish to make a Formal Complaint, the Title IX Coordinator determines whether to initiate a Formal Complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- The Title IX Office offers supportive measures and provides impacted person with information about their rights and options for reporting and resolution.
- If a supportive and remedial response is preferred, the Title IX Office works with the Complainant to identify their wishes and then seeks to facilitate implementation. If no Formal Resolution Process is initiated, the Complainant can elect to initiate one in the future. If a Formal Resolution Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
- If it does, the Title IX Coordinator will initiate the formal investigation and resolution process based on a Formal Complaint, directing the investigation to address:
  - o an incident, and/or a pattern of alleged misconduct, and/or
  - o a culture/climate issue, based on the nature of the complaint.

### **Determining Jurisdiction**

The Title IX Coordinator will determine if the conduct alleged in the Formal Complaint implicates Title IX if all of the following elements are met:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in Keene State's education program or activity; and
3. The alleged conduct, if true, would constitute covered sexual harassment as defined by Title IX.

If the misconduct alleged does not fall within the scope of Title IX, the Title IX Coordinator determines that Title IX does not apply (and will "dismiss" that aspect of the complaint, if any), assesses if the

misconduct is alleged to violate other provisions of this Policy or other College policies, and if applicable, will refer the matter accordingly. Please note that dismissing a complaint under Title IX is procedural and does not limit the College's authority to address a complaint with an appropriate process and remedies. The College will apply the same procedures whether the conduct falls under the statutory definitions of Title IX or under other Prohibited Conduct as outlined in this Policy.

### **INITIATING THE RESOLUTION PROCESS: FILING A FORMAL COMPLAINT**

The major stages of the formal resolution process are: 1) the investigation; 2) the hearing; 3) the decision; and 4) the appeal.

#### **Filing a Formal Complaint**

A Formal Complaint is a written document filed and signed by a Complainant (or otherwise showing that the Complainant is the one filing the document), or signed by the Title IX Coordinator, which alleges that a Respondent has engaged in Prohibited Conduct.

The Formal Complaint must contain sufficient information regarding the allegations of Prohibited Conduct to permit the Respondent to understand the allegations being brought and to be able to adequately respond. At a minimum, the Formal Complaint must indicate: the name of the Respondent; the date or approximate date of the conduct; a description of the conduct; and the location of the conduct. Further, the Formal Complaint must indicate, to the best of the Complainant's ability, the alleged form(s) of Prohibited Conduct that the Complainant alleges the Respondent committed. It is not required that the Formal Complaint reflect every detail related to the allegations in the complaint; additional information may be discovered during the investigation.

All Complainants must understand that following receipt of a Formal Complaint of Sexual Misconduct, the College is legally required to provide prompt written notice to the Respondent(s).

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The College will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### **Required Dismissal**

At any time prior to the commencement of a hearing, if the conduct alleged in a Formal Complaint would not constitute Title IX Prohibited Conduct even if proved; did not occur in the College's Programs or Activities; or did not occur in the United States, the College is required to dismiss the Formal Complaint under this Process. The Title IX Coordinator will assess if the conduct is alleged to violate other provisions of this Policy or other College policies and apply appropriate procedures as warranted.

#### **Permissive Dismissal**

The College may dismiss a Formal Complaint if, at any time prior to the hearing:

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



Complaints that are dismissed pursuant to this section may be remanded to appropriate College personnel for review of the alleged conduct. Parties will be simultaneously notified, in writing, of any decision to dismiss the Formal Complaint. Either party may appeal any decision to dismiss the Formal Complaint through the appeal procedures set forth below.

### **Notice of Allegations**

A written Notice of Allegations will be provided to a Respondent upon receipt of a Formal Complaint. This notice will occur as soon as practicable, generally within two (2) business days, if there are no extenuating circumstances.

The Notice of Allegations will include the following:

- Notice of the College's Resolution Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting Prohibited Conduct, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting Prohibited Conduct; and the date and location of the alleged incident, if known.
- 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 grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A reminder about Retaliation and knowingly making or submitting false statements or information during the Resolution Process.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise alleged to be Prohibited Conduct under this Policy, the College will notify the parties whose identities are known of the additional allegations by their College email accounts or other reasonable means.

### **INFORMAL RESOLUTION PROCESS**

The parties may choose to engage in an informal resolution of the Formal Complaint, so long as the following conditions are met:

- Both parties have received the Notice of Allegations;
- Both parties voluntarily choose to engage in informal resolution;
- Both parties provide informed written consent; and
- The Formal Complaint is not a matter brought by a student Complainant against an employee Respondent.

Either party may request that the College seek to address the complaint through an informal process. Generally speaking, these resolution options are less time intensive, while still affording individuals an opportunity to actively participate in the resolution of their complaints. While not "formal" in terms of this policy, it is not casual or taken less seriously. It is often used in circumstances when a Complainant does not wish to participate in a formal resolution process but wants the behavior to stop, when an analysis reveals that the situation can be resolved through conversation or other informal and direct steps.

**Procedures for Entering and Exiting Informal Resolution Process** - The Parties may elect to enter the informal resolution process at any time through informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

- No Party is required to participate in informal resolution, and the College will never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.
- The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences.

**Determination to Approve Entry into Informal Resolution Process** - Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or designee must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances. This determination is not subject to appeal.

**Informal Resolution Options** - Courses of action may include, but are not limited to:

- **Administrative Resolution:** Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations, the College may administratively resolve the Formal Complaint.
- **Negotiated Resolution:** The Title IX Coordinator, with the written consent of the Parties, may negotiate and implement an agreement to resolve the allegations that satisfies all Parties and the College. Such resolutions may not be appealed after a written agreement is reached. Failure by a Party to honor any portion of an agreement may result in removal to the Formal process.
- **Mediation:** The purpose of mediation is for the parties who are in conflict to identify the implications of one's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties. During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the facilitator will conduct separate meetings. At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Title IX Coordinator will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.
- **Restorative Practices:** Restorative practices may include a dialogue, facilitated by an individual with appropriate training, intended to bring together those who were impacted by an offense, typically including those who were harmed, those who were responsible for causing the harm, and impacted community members. Through a facilitated dialogue, the participants discuss the harm and surrounding events and come together to identify what harm was caused and, collaboratively, determine if and how trust might be repaired or rebuilt. Restorative Practices may result in an agreement between the Complainant, Respondent, the College, and other impacted parties.
- **Other Options:** Including options available under the Community Restoration Protocol or as deemed warranted by the Title IX Coordinator.
- **Removal to Formal Process:** Either party may elect to withdraw from the informal process prior to its completion. Additionally, if the Title IX Coordinator determines that meaningful participation or progress is lacking, the Formal process will recommence.

## **THE INVESTIGATION**

The investigation is a neutral, fact-gathering process. The investigation shall be fair and impartial and not rely upon stereotypes. Both the Complainant and Respondent will have an equal opportunity to identify potential witnesses and provide any evidence or other information relevant to the investigation. The

Investigator will gather relevant and available information including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and/or medical records (subject to the voluntary, written consent of the applicable party).

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation. Parties can generally expect a hearing to be held within 90-120 days of the filing of a Formal Complaint, although extension to this timeframe may be necessary for good cause shown.

### **Document and Records**

In addition to reviewing any documents submitted by the Complainant and Respondent, the Investigator will seek to obtain other records which may be directly related to the allegations raised in the Formal Complaint, including, but not limited to documents, police records, electronic or other record of communications between the parties or witnesses or records or other potentially relevant information. In seeking to obtain such evidence, the Investigator will comply with applicable laws and College policies.

### **Site Visits**

The Investigator may visit sites or locations of potential relevance to the allegations in the Formal Complaint and record observations through written or photographic documentation.

### **Complainant and Respondent Interviews**

The Complainant and the Respondent will have the opportunity to be interviewed (separately) by the Investigator. The Investigator may offer the parties the opportunity to participate in more than one interview.

### **Witness Interviews**

The Investigator will make a good faith effort to contact and interview any witnesses, including those persons no longer at the College or who may not have any affiliation with the College. The parties will have the opportunity to provide witness names to the Investigator. The Investigator may also interview any other individual believed to have relevant information. While in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, pandemic safety measures) may require individuals to be interviewed remotely. Remote conference technologies may be used for interviews in the Investigator's discretion. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews. The Investigator will inform each witness or other individuals interviewed that they are prohibited from retaliating against the Complainant and Respondent or other witnesses.

### **Role and Participation of Witnesses in the Investigation**

Witnesses who are employees of the College are expected to cooperate with and participate in the College's investigation and Resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or Resolution process may warrant discipline.

### **Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. All interviews shall be recorded, to the extent feasible, with the consent of the individuals present and all involved Parties must be made aware of audio and/or video recording. Any audio and/or video recording of interviews are the sole property of KSC.

### **Evidence Review By Parties**

At the end of the investigation, the Investigator will give each of the parties an equal opportunity to inspect and review *all* evidence (inculpatory and exculpatory) that *directly relates* to the allegations in the Formal Complaint. Each party will have ten (10) calendar days to respond in writing to the investigator, including providing the names and contact information for any additional witnesses for the investigator to consider, and submitting written, relevant questions that a party wants asked of any party or witness, and limited follow-up questions. The investigator will consider the written responses.

## **INVESTIGATIVE REPORT**

### **Contents**

After receiving the parties' written responses to the evidence, if any, the Investigator will prepare a Final Investigation Report summarizing and analyzing the relevant information determined through the Investigation and referencing any supporting documentation or statements. The Investigator may provide a summary of their impressions including context for the information. The Investigator will not make a recommendation or a determination as to whether an alleged violation occurred; that decision is reserved for the Hearing Panel.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence gathered during the investigation.

Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

### **Distribution to Parties**

The Complainant and the Respondent and their respective advisors will receive a copy of the Final Investigative Report at least ten (10) calendar days before the Hearing.

### **Notice of Hearing**

The Title IX Coordinator or designee will issue a Notice of Hearing to the Complainant and the Respondent. The Notice of Hearing will identify the date, time, and place of the hearing and provide the names of the Hearing Panel. The Notice of Hearing will be sent at least ten (10) calendar days prior to the hearing date.

## **PRE-HEARING CONSIDERATIONS**

### **Request to Remove a Member of the Hearing Panel**

The Complainant and Respondent may submit written requests to the Title IX Coordinator or designee asking that a Hearing Panel member be removed for reasonable articulable grounds of bias, conflict of interest, or an inability to be fair and impartial. The written request must identify the grounds for the removal and be received by the Title IX Office within three (3) calendar days following delivery of the Notice of Hearing. The Title IX Coordinator or designee will decide whether to grant such a request. Removal of a Panel member may require that the hearing be rescheduled.

### **Request to Present Witnesses Not Previously Identified**

Parties are expected/encouraged to identify any witness they want to be interviewed by the Investigator during the course of the investigation. However, any party wishing to call any witness at hearing who has not been previously identified and/or interviewed by the Investigator, must submit a list of witnesses to the Chair or designee no later than five (5) calendar days prior to the scheduled start of the hearing.

Parties should provide contact information (e-mail address; telephone number, if known) for any witness who is not a member of the College community. The request must include the following:

- A written statement and/or description of the information the witness is expected to provide at the hearing;
- A summary of why the witness' expected testimony is relevant to making a decision on the Formal Complaint; and
- The reason why the witness was not interviewed by the Investigator.

The Chair or designee will determine if there is sufficient justification for permitting a witness who was not interviewed by the Investigator. The Chair or designee may require that the Investigator interview newly suggested witnesses.

### **Information Not Provided to the Investigator**

A party wishing to present documentation or other evidence at the hearing that was not provided to the Investigator, must submit to the Chair the list of documents or other evidence no later than five (5) calendar days prior to the scheduled start of the hearing and a request that the documents or other evidence be available at hearing. The request must contain the following information:

- Identification and description of the document or other evidence the party intends to present;
- A summary of why the document or other evidence is relevant to making a decision on the complaint; and
- The reason why the document or other evidence was not provided to the Investigator.

The Chair will determine if the additional documentation or other evidence is relevant and if there is sufficient justification for permitting its use at the hearing. The Chair may also require that the Investigator review the additional documentation or other evidence. If the additional documentation or evidence is approved, it will be shared with the parties and the Hearing Panel prior to the hearing.

### **Request to Reschedule Hearing**

Either party may request to reschedule the hearing. Requests to re-schedule must come directly from the Complainant or Respondent, must be submitted to the Title IX Coordinator or designee within three (3) calendar days following delivery of the Notice of Hearings and must specify the reasons for the request. The Title IX Coordinator or designee retains the discretion to reschedule the hearing at any time for good cause.

### **Pre-Hearing Meetings**

The Chair in their discretion may convene a pre-hearing meeting(s) with the Parties and their Advisors to invite them to submit the questions or topics they (the Parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

At each pre-hearing meeting with a Party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing and to aid in the efficiency of relevancy determinations at the live hearing. The Chair may during a recess consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

## **THE HEARING**

### **General Requirements and Expectations**

#### **Participants**

Those who may be present at the hearing are: the Complainant; the Respondent; each party's Advisor; each party's support person; the Investigator; witnesses; and other College officials. The Investigator and witnesses may only be present in the hearing room during the Call to Order and when they are providing information to the Hearing Panel. The Complainant and Respondent will be present in the hearing room, unless as prescribed under Alternative Attendance.

#### **Non-Attendance**

If a party does not attend a hearing for any reason other than a documented emergency, the hearing may be held in their absence. The refusal by a party or witness to participate in a live hearing and to submit to cross-examination can have significant effects on the outcome and/or may result in the Hearing Panel not having enough information to reach a conclusion as to responsibility for violations of this Policy.

#### **Alternate Attendance**

A Complainant or Respondent may request to participate in the hearing by suitable means that would not require physical proximity to the other. This can include, but is not limited to, using technology to facilitate participation from a remote location. Technology will enable participants to meaningfully interact with the person answering questions. Witnesses may request to appear virtually in a manner that enables participants to see and hear each other. The Chair may allow for witnesses to appear through technological means rather than in-person attendance. All requests by a party to participate in the hearing other than in person must be submitted five calendar days in advance of the hearing to the Title IX Coordinator.

#### **Recording Proceedings**

Hearings are audio-recorded for the purpose of: (1) reference by the Hearing Panel; (2) review on appeal by the Appeals Officer; (3) the official record of the hearing; and (4) availability to the Complainant or Respondent, upon request. Hearing Panel deliberations are not audio-recorded. The recording is the property of Keene State College. The recording or transcript will be made available to the parties for inspection and review.

#### **Privacy**

Hearings are not public and, to the extent technology is necessary to effectuate the requests of the party, all live video will not be available or accessible to non-participants.

#### **Participant Conduct**

Any participant in the live hearing, including Advisors, must conduct themselves appropriately and respectfully towards all other participants. Participants may not act, and Advisors may not question parties or witnesses, in a way that may be considered by a reasonable person to be abusive, intimidating, harassing, or disrespectful. The Chair, in their sole discretion, may respond to such behavior by adjourning the hearing and excluding the offending person.

#### **Role of Advisors at Hearing**

Prior to the hearing, the parties are encouraged to meet with their Advisors in order to discuss with their Advisor the questions they would like asked at the hearing. Each party's Advisor will directly, orally, and in real time ask the other party and any witnesses relevant questions and follow-up questions.

Parties are also encouraged, but not required, to submit to the Title IX Office questions they would like asked at the hearing. The Title IX Coordinator will forward questions to the Chair. Pre-submitting questions may substantially shorten the duration of the hearing, since the Chair will have had the opportunity to assess the questions and whether they seek relevant information in advance of the hearing. Advisors may not interject, coach, advocate for, or otherwise speak on behalf of the party they are supporting at hearing, unless otherwise permitted by the Chair. This includes a prohibition against responding to, questioning, or arguing with the Chair regarding relevancy determinations.

In the event that a party does not have an Advisor present at hearing to conduct the questioning of the other party and witnesses, the College will provide an Advisor, of the College's choosing, to conduct the questioning at hearing. If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.

### **Role of the Chair**

The Chair is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding offending persons. During questioning of parties and witnesses by Advisors, the Chair will determine whether questions seek relevant information. The Chair will explain any decision to exclude a question as seeking non-relevant information.

#### **Determining Relevance**

In determining whether a question is seeking relevant information, the Chair will focus on whether the question seeks information, material to the allegations at issue, which would aid the Hearing Panel in determining whether the allegations are more likely or less likely to be true.

#### **Information Protected by Privilege**

Information or evidence protected by a legally-recognized privilege or which relates to any party's medical, psychological, and similar records cannot be considered relevant unless the party about whom the information is requested or submitted has provided voluntary written consent to the inclusion of the otherwise protected information.

#### **Duplicative/Repetitive Questions**

Questions that are duplicative or repetitive may be deemed to not be seeking relevant information and may be excluded.

#### **Decisions Regarding Questions**

The Chair is not required to provide lengthy or complicated explanations in support of a relevance determination. Rather, it is sufficient, for example, for the Chair to explain that a question is excluded because the question seeks information related to otherwise excluded information or because the question seeks information about a detail that is not probative of any material fact concerning the allegations.

#### **Discretion of the Chair**

The Chair retains discretion to alter, at any time, the order of the hearing process, as needed.

The Title IX Coordinator or designee will provide Rules of Decorum and an agenda for the Hearing at least five (5) calendar days in advance of the Hearing.

## **THE DECISION**

At the conclusion of the investigation and hearing, the Hearing Panel shall evaluate the evidence and decide, based on a preponderance of the evidence, whether the Respondent is responsible for violating Keene State College Policy. The Hearing Panel shall objectively evaluate all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations shall not be based on a person’s status as a complainant, respondent, or witness. The Hearing Panel will provide the parties and their advisors a written decision and rationale. Absent extenuating circumstances, this written determination will be issued no later than seven (7) business days following completion of the hearing.

The Hearing Panel shall explain in writing the reasons for determinations regarding responsibility, including findings of fact, conclusions about whether it “is more likely true than not” that the Respondent is responsible for the reported conduct, and the rationale for the results as to each allegation. The procedural steps in the investigation will also appear in the written decision so that both parties have a thorough understanding of the investigative process that led to the determination regarding responsibility. Where applicable, the decision will also include whether remedies will be provided to the Complainant and any disciplinary sanctions. The written decision will be provided to the parties simultaneously. The parties will also be informed in writing of the right to appeal and the appeal procedures.

### **Sanctions**

Institutional discipline for a finding of responsibility may be informed by the nature and the gravity of the misconduct. It may include, but is not limited to: warning, restitution, probation, suspension, dismissal, discharge, change of residence, disenrollment from a course, restriction on enrollment, termination of employment, no contact directives, trespass from campus, prohibition of participation in College programs or activities (which may include graduation), and/or other educational and employment discipline deemed appropriate.

Staff and faculty may be subject to disciplinary action up to and including discharge.

### **APPEALS**

Each party may appeal 1) the dismissal of a Formal Complaint or any included allegations and/or 2) a determination regarding responsibility. To appeal, a party must submit their written appeal within ten (10) calendar days of being notified of the decision, indicating the grounds for the appeal.

The appeal may only be based on one or more of the following grounds and must state, with specificity, the moments during the process that gave rise to the stated grounds of appeal:

- Procedural irregularity that affected the outcome of the matter (i.e., a procedural error that, but for the error’s occurrence, could have resulted in a different outcome);
- The Title IX Coordinator, investigator(s), or decision-maker(s) 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 (i.e., the individual(s) demonstrated through specific words or actions that they were predisposed for or against one of the parties).
- Inappropriateness of the Sanction (i.e., the sanction is disproportionate to the gravity of the violation(s) for which the Respondent has been found responsible); or
- New Information that was not reasonably available at the time of the determination regarding dismissal of the Formal Complaint or responsibility was made that was not reasonably available at the time and that could have affected the outcome of the decision on dismissal or responsibility.



The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures remain available during the pendency of the appeal.

If a party appeals, the College will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

An Appellate Officer will be assigned, who will be free of conflict of interest and bias, and will not have served as investigator, on the Hearing Panel, or in any other role or capacity in the same matter.

The Appellate Officer will collect any additional information needed and all documentation regarding the appeal and the subsequent responses and they will render a decision in no more than ten (10) business days, barring exigent circumstances

The outcome of the appeal will be provided in writing simultaneously to both parties and include rationale for the decision.

### **Finality**

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals”, or if an appeal is not filed, the date on which the opportunity to appeal expires.

## **MISCELLANEOUS**

### **Effect of Pending Complaint on Student Respondents**

If the Respondent is a current student, no notation will be placed on the Respondent’s transcript of a complaint or pending disciplinary action during the Resolution Process. If the Respondent withdraws from the College before the final resolution of a Formal Complaint, the Respondent’s transcript will be notated to reflect a pending disciplinary action, subject to modification to reflect the outcome of the disciplinary action. Furthermore, Keene State will place a student conduct hold on the student’s account until the matter is resolved. A student Respondent who withdraws while an investigation or conduct charge is pending may be prohibited from returning to the College or transferring to another USNH institution until the pending matter is resolved. If the student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the resolution process may continue.

### **Employee Resignation**

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee. However, the College will address any systemic issues that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

An employee who resigns with unresolved allegations pending is not eligible for rehire by the University System of New Hampshire, and the records retained by Human Resources will reflect that status. All Keene State responses to future inquiries regarding employment references for that individual will include the former employee is not eligible for rehire.

### **Conflict of Interest/Bias**

The Title IX Coordinator is expected to operate with independence and free from bias and conflicts of interest. To raise any concern involving bias or conflict of interest, or misconduct or discrimination committed by the Title IX Coordinator, contact the Chief of Staff at (603) 358-2002, or email at [ksc.chiefstaff@keene.edu](mailto:ksc.chiefstaff@keene.edu). The Chief of Staff may also coordinate with the Director of Human Resources

regarding review and resolution of such concerns. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

**Records Maintained**

The College will keep all files and records related to the complaints filed for a minimum of seven years. The Title IX Coordinator is designated as the custodian of these records.