

**SHENANDOAH UNIVERSITY'S TITLE IX SEXUAL HARASSMENT POLICY AND
PROCEDURES¹**

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1. Glossary

- *Advisor* means a person chosen by a party or appointed by Shenandoah University (“Shenandoah” or “the University”) to accompany the party to meetings related to the resolution process, to advise the party on that process, and/or to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could be sexual harassment based on a protected class or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that Shenandoah investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Shenandoah is in normal operation.
- *Education program or activity* means locations, events, or circumstances where Shenandoah exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by Shenandoah.
- *Final Determination*: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate this Policy.
- *Finding*: A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by Shenandoah to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within Shenandoah’s Formal Grievance process.

- *Investigator* means the person or persons charged by Shenandoah with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Shenandoah who is obligated by this Policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.²
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority* (OWA) means an employee of Shenandoah explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the university.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the “Formal Grievance Process” detailed below and defined above.
- *Process B* means any process designated by Shenandoah to apply only when Process A does not, as determined by the Title IX Coordinator.
- *Recipient* means Shenandoah University, a postsecondary education program that is a recipient of federal funding.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Shenandoah’s educational program(s).
- *Retaliation* is materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

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

- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by Shenandoah on a Respondent who is found to have violated this Policy.
- *Sexual Harassment* is the umbrella category for all offenses under this Policy, including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by Shenandoah to ensure compliance with Title IX and Shenandoah's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

2. Rationale for Policy

Shenandoah is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity,

Shenandoah has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation.

Shenandoah values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

3. Applicable Scope

The core purpose of this Policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this Policy is reported, the allegations are subject to resolution using Shenandoah's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

³ This Policy is applicable immediately after a student is enrolled at Shenandoah University

throughout their entire matriculation.

When the Respondent is a member of Shenandoah community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Shenandoah community. This community includes, but is not limited to, students,³ student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.

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

4. Title IX Coordinator

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

Ashley Smeltzer-Kraft serves as a Deputy Title IX Coordinator and assists with Shenandoah's efforts related to intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation under this policy.

5. Independence and Conflict-of-Interest

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

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, or to report misconduct committed by the Title IX Coordinator, contact Shenandoah's General Counsel. The General Counsel is Peter Kronemeyer who may be contacted at (540) 665-4921 or pkroneme@su.edu.

6. Administrative Contact Information

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

Amanda Levy
Title IX Coordinator 1460 University Drive
Cooley Hall, Room 207

Winchester, VA 22601

540-665-4925

Email: [aelvy@su.edu](mailto:aelvvy@su.edu) or nosexualmisconduct@su.edu

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

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

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

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

Office for Civil Rights (OCR)

U.S. Department of Education 400 Maryland Avenue, SW Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

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

Or, for complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)

7. Complaints and Reports of Sexual Harassment

Individuals may notify the university of a potential violation of this Policy using any of the following options:

- 1) File a Formal Complaint with, or give verbal notice to, the Title IX Coordinator. A complaint or notice may be provided at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- 2) Report online, using the reporting form posted at https://cm.maxient.com/reportingform.php?ShenandoahUniv&layout_id=1
- 3) Email nosexualmisconduct@su.edu

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

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

8. Supportive Measures

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

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Shenandoah will inform the Complainant, in writing, that they may file a Formal Complaint with Shenandoah either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Shenandoah will maintain the privacy of the supportive measures, provided that privacy does not impair Shenandoah's ability to provide the supportive measures. Shenandoah will act to ensure as minimal an academic/occupational impact on the parties as reasonably practicable. Shenandoah will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance

- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Campus ban
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

Shenandoah can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by a review committee composed of at least the following members: Title IX Coordinator, the Director of DCS, and the Dean of Students (or their designees). The review committee will use its standard threat assessment tools to determine whether emergency removal is justified.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to “show cause” why the action/removal should not be implemented or should be modified.

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

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

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary, prepared by the review committee, of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this Policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion.

Shenandoah will implement the least restrictive emergency actions practicable in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, the university may take any action allowed by law and/or university policy.

10. Promptness

All allegations will be acted upon promptly by Shenandoah once it has received notice of a potential policy violation or a Formal Complaint. Complaints take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Shenandoah will avoid undue delays within its reasonable control.

Any time the general time frames for resolution outlined in Shenandoah's procedures will be delayed, the Title IX Coordinator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Shenandoah will use reasonable efforts to preserve the privacy of reports.⁴ Shenandoah will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.

1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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

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

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

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

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

12. Jurisdiction of Shenandoah University

This Policy applies to the education programs and activities of Shenandoah University, to conduct that takes place on any of the campuses or on any other property owned or controlled by Shenandoah, at Shenandoah-sponsored events, or in buildings owned or controlled by Shenandoah's recognized student organizations (if any). The Respondent must be a member of Shenandoah's community in order for this Policy to apply.

This Policy may also be applicable, in the Title IX Coordinator's discretion, to off-campus and/or online misconduct that effectively deprives someone of access to Shenandoah's education programs or activities, including employment activities, or affects a substantial Shenandoah interest. A substantial Shenandoah interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual participating in, or attempting to participate in, Shenandoah's programs or activities;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Shenandoah.

If the Respondent is unknown or is not a member of the Shenandoah community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Shenandoah's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, Shenandoah may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Shenandoah property and/or events.

All vendors serving Shenandoah through third-party contracts are subject to the policies and procedures of their employers and any policies and procedures to which their employer has agreed to be bound by their contracts.

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

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

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Shenandoah's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by significant time delay, Shenandoah will typically apply the Policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

14. Online Sexual Harassment and/or Retaliation

The policies of Shenandoah are written and interpreted broadly to include online manifestations of any conduct prohibited below, when the conduct occurs in or has an effect on Shenandoah's education program and/or activities or includes the use of Shenandoah's networks, technology, or equipment.

Although Shenandoah may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Shenandoah, it may engage in any available means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening

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

15. Shenandoah University's Non-Discrimination Statement

Shenandoah University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Shenandoah University values the unique and diverse perspectives of individuals and communities locally and globally and seeks to foster mutual understanding in an inviting community where individuals are welcome and respected. The university does not discriminate on the basis of race, color, religion, sex, pregnancy, sexual orientation, gender identity, national origin, age, physical or mental disability, genetic information, veteran's status, or on any other basis protected under applicable law.

16. Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Virginia regard Sexual Harassment as an unlawful discriminatory practice.

Shenandoah has adopted the following definition of Sexual Harassment in order to comply with the Title IX regulation. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

- 1) Sexual harassment includes quid pro quo misconduct as well as conduct that creates a hostile environment:

Quid Pro Quo:

- a. an employee of Shenandoah,
- b. conditions⁵ the provision of an aid, benefit, or service of the university,
- c. on an individual's participation in unwelcome sexual conduct.

⁵ Implicitly or explicitly.

Hostile Environment:

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

2) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act⁷ directed against another person⁸,
- without the consent of the Complainant,

⁶ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁷ Sexual acts include:

Forcible Rape:

- 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 Complainant. Forcible Sodomy:
- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical

incapacity.

⁸ This would include having another person touch you sexually, forcibly, or without their consent.

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

b) Sex Offenses, Non-forcible:

○ Incest:

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

○ Statutory Rape:

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

3) Dating Violence, defined as:

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

4) Domestic Violence, defined as:

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

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

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

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

5) Stalking, defined as:

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

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

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

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

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

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

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

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

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

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

Consent in relationships must be considered in context. When parties consent to BDSM¹⁰ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or

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

even saying “no” may be part of the kink and thus consensual, so Shenandoah’s evaluation of communication in kink situations will be guided by reasonableness, rather than strict adherence to Policy that assumes non-kink relationships as a default.

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

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

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

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

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

17. Retaliation

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

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

Shenandoah and any member of Shenandoah’s community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

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 under this Policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

18. Mandated Reporting and Confidential Resources

All Shenandoah employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or Policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Shenandoah for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

Confidential Resources at Shenandoah are individuals who are exempt from the mandated reporting requirement. If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

Mannie Brown, Associate Director for Gender and Sexuality Resources
Lavender Lounge, Cooley Hall, 1st floor
(545) 665-7339, ebrown1@su.edu

[Not Just] Women's Center Staff Brandt Student Center 122b 540.665.3463

Rev. Delyn Celec, Minister
Goodson Chapel room 6 (lower level) 540.665.3485, dcelec@su.edu

Wilkins Wellness Center Staff Racey Hall, 540.665.4530

Shenandoah University Counseling Center Clinical Staff Racey Hall 1st Floor
540-665-4752, counseling@su.edu

Off-campus Confidential Resources (non-employees):

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals are permitted to maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors are available to help free of charge and may be consulted on an emergency basis during normal business hours.

b. Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by Shenandoah to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits Shenandoah's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

c. Mandated Reporters and Formal Notice/Complaints

All employees of Shenandoah (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of misconduct under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Shenandoah.

Supportive measures may be offered as the result of such disclosures without formal action by Shenandoah.

Mandated reporters must also report instances of sexual harassment or abuse of minors to the Title IX Coordinator.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of this Policy and may subject a Mandatory Reporter to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though Shenandoah is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

19. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the

Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Shenandoah proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process upon completion of an appropriate review committee assessment.

The Title IX Coordinator's decision should be based on results of the review committee assessment that show a compelling risk to health and/or safety that requires Shenandoah to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Shenandoah may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Shenandoah's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes a written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When Shenandoah proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to providing evidence or testimony.

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

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

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

20. Federal Timely Warning Obligations

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

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

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Shenandoah Policy.

22. Amnesty for Complainants and Witnesses

The Shenandoah community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Shenandoah officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Shenandoah community that Complainants choose to report misconduct to Shenandoah officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Shenandoah may extend to parties and witnesses amnesty from minor Policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident, at the discretion of the Title IX Coordinator.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug

distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Department of Campus Safety or other campus authority).

Shenandoah may offer amnesty to students who offer help to others in need. Although amnesty may be offered, Policy violations cannot be overlooked and Shenandoah may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT (KNOWN AS PROCESS “A” or “Formal Grievance Process”)

1. Overview

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

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

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

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

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

2. Notice/Complaint

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

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

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

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

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

3. Initial Assessment

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

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a Formal Complaint because a review committee assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance 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 grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
- If it does not, the Title IX Coordinator will “dismiss” the complaint (or the aspect of the complaint that does not fall within Title IX), assesses which policy or policies may still apply and may then refer the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Shenandoah’s authority to address a complaint with an appropriate process and remedies.

a. Review Committee Assessment

In some cases, the Title IX Coordinator may determine that a threat assessment is necessary. A threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. Threat assessment is conducted by a review committee, composed of the Title IX Coordinator (or designee), the Director of DPS (or designee), and the Dean of Students (or designee). The review committee will assess all available information to determine:

- Whether emergency removal of a Respondent on the basis of immediate threat to physical health/safety is necessary;
- Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of an incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether a Clery Act Timely Warning/Campus ban is needed.

b. Dismissal (Mandatory and Discretionary)¹²

Shenandoah must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

¹² These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

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

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

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

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

This dismissal decision is appealable by any party under the procedures for appeal below.

4. Counterclaims

Shenandoah is obligated to ensure that the grievance process is not abused for retaliatory purposes. Shenandoah permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a separate violation of this Policy.

¹³ Such a Complainant is still entitled to supportive measures, but the Formal Grievance process is not applicable.

5. Right to an Advisor

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

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

a. Who Can Serve as an Advisor

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. The parties may choose Advisors from inside or outside of the Shenandoah community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Shenandoah, the Advisor will be trained by Shenandoah and be familiar with Shenandoah's resolution process.

If the parties choose an Advisor from outside the pool of those identified by Shenandoah, the Advisor may not have been trained by Shenandoah and may not be familiar with Shenandoah's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. Advisor's Role in Meetings and Interviews

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.

Shenandoah 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, Shenandoah is not obligated to provide an attorney.

¹⁴ This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

¹⁵ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

c. Advisors in Hearings/Shenandoah-Appointed Advisor

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, Shenandoah will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, Shenandoah will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Shenandoah's policies and procedures.

e. Advisor Violations of Shenandoah Policy

All Advisors are subject to the same Shenandoah policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Shenandoah officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor

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

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

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

g. Privacy of Records Shared with Advisor

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

h. Expectations of an Advisor

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

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

i. Expectations of the Parties with Respect to Advisors

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

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

j. Assistance in Securing an Advisor

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

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

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

6. Resolution Processes

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

a. Formal Grievance Process

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

b. Informal Resolution

Informal Resolution is applicable when the parties and Title IX Coordinator voluntarily agree to resolve a matter informally. Informal resolution may take several forms. The Title IX Coordinator can resolve a matter informally by providing remedies and supportive measures to resolve the situation; or when the Respondent accepts responsibility for violating Policy; or when the parties voluntarily agree to resolve the matter through Alternate Resolution (mediation, restorative practices, etc.) or Negotiated Resolution.

It is not necessary to pursue Informal Resolution first in order to pursue the Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and request the Formal Grievance process. Further, if an Informal Resolution fails after the fact, the Formal Grievance may be pursued.

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the Respondent accepts responsibility for violating Policy, and desires to accept a sanction and end the resolution process (this usually occurs post- investigation).
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

Prior to implementing Informal Resolution, Shenandoah will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Shenandoah.

Shenandoah will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

(i) Supportive Measures

This approach is used when the use of non-punitive remedies and supportive measures only will resolve the situation. The Title IX Coordinator will offer the Complainant supportive measures and resources only.

(ii) Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of the Policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community (if necessary).

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which

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

(iii) Alternate and Negotiated Resolutions

Alternate Resolution is a less formal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, conduct and is encouraged as an alternative to the Formal Grievance process (described below) to resolve conflicts for these matters. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution proceeding, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of this Policy. The decision made at the end of an Alternate Resolution proceeding, and any sanctions or remedies imposed, are not appealable.

Additionally, the Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Shenandoah. Negotiated Resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the pool are trained annually. In some cases, and at the discretion of the Title IX Coordinator (or designee), part or all of the pool’s function may be delegated to a trained third party, such as a third party that provides investigation, and/or hearing and decision-making services.

a. Pool Member Roles

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

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

b. Pool Member Appointment

The Title IX Coordinator appoints the Pool¹⁶, which acts with independence and impartiality. Although members of the Pool may be trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Shenandoah can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

c. Pool Member Training

The Pool members receive annual training. This training may include, but is not limited to:

- The scope of Shenandoah's Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning

¹⁶ This does not preclude Shenandoah from having all members of the Pool go through an application and/or interview/selection process. Pool members will be trained on topics relevant to the position a member will serve in (e.g., as a decision-maker only) and a pool member may be trained to fulfill more than one role in a resolution process.

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

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors who are Shenandoah employees, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here:

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

d. Pool Membership

The pool will include approximately 12 faculty/staff trained to perform roles in the resolution process. Members may be trained in one or more roles such as advising, investigating and decision-making. In no case will an investigator serve as a decision-maker in the same case they investigated.

Pool members are usually appointed to one-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of the allegations in the complaint,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Shenandoah presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Shenandoah's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Shenandoah's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to Shenandoah's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' Shenandoah-issued email account. Once emailed, and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

Shenandoah will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as a estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one or more Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President of Administration and General Counsel.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation.

Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Shenandoah operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a Policy violation by the applicable standard of proof.

12. Investigation Timeline

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.

Shenandoah 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.

13. Delays in the Investigation Process and Interactions with Law Enforcement

Shenandoah may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Shenandoah will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if warranted. Shenandoah will promptly resume its investigation and resolution process as soon as practicable. During such a delay, Shenandoah will implement supportive measures as it deems appropriate.

Shenandoah action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity of, and contact information for, the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential Policy violation.

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations.
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no Policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Shenandoah does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) business days. Each copy of the materials shared will be watermarked on each page with the role of

the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Shenandoah are expected to cooperate with and participate in Shenandoah's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Shenandoah's Policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Shenandoah will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording. Recordings will be destroyed after a final resolution is reached.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool depending on whether the Respondent is an employee or a student.

19. Hearing Decision-maker Composition

Shenandoah will designate either a three-member panel or a single decision maker from the Pool, at the Title IX Coordinator's discretion. If a panel is used, the Title IX Coordinator will appoint one of the three members as Chair.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

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

20. Evidentiary Considerations in the Hearing

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

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

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

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

21. Notice of Hearing

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

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing. Recordings, or a transcript thereof, will be retained for seven (7) years. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Shenandoah will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-makers about the matter, unless they have been provided already.¹⁷
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination. This statement will only be considered after a final determination of responsibility.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

¹⁷ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- That parties must turn off mobile phones/devices not used for purposes of the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Shenandoah and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should notify the Title IX Coordinator in writing at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Title IX Coordinator, after consultation with the parties, investigators, and the Chair, will provide names of the persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence or may exclude the evidence and continue the hearing.

The parties will be given a list of the names of the Decision-makers at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing.

Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-makers a list of the names of all parties, witnesses, and Advisors in advance of disclosing the names of the Decision-maker(s) to the parties, and at least ten (10) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors, separately or jointly, to invite them to submit the questions or topics they (the parties and/or 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 a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

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. The Chair may consult

with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

25. Hearing Procedures

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

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

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

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

26. Joint Hearings

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

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

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

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

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

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

28. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-makers and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-makers should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for

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

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

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

30. Refusal to Submit to Cross- Examination and Inferences

To the extent permitted by law, and if deemed reliable and relevant by the decision- maker(s), and not otherwise subject to exclusion under this Policy, the decision-maker(s) may consider statements of persons who were not present at the hearing, or persons who were present at the hearing but who nevertheless were not subject to cross-examination. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like.

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

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

31. Recording Hearings

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

The Decision-makers, the parties, their Advisors, and appropriate administrators of Shenandoah will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

32. Deliberation, Decision-making, and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the Policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard will be used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-makers may – at their discretion – consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Director of Student Conduct and Community Standards, for students, and the Director of Human Resources, for employees, and will determine the appropriate sanction(s). The Decision-maker(s) may consult with other appropriate administrators in determining sanctions, as long as no such administrator will serve as an appeal Decision-maker in the same process.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions. The report must be submitted to the Title IX Coordinator within ten (10) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

The Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then use reasonable efforts to share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Shenandoah records, or emailed to the parties' Shenandoah-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the Policy(ies) violated (if any), including the relevant Policy section, and will contain a description of the procedural steps taken by Shenandoah from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged Policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant Policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Shenandoah is permitted to share such information under state or federal law; any sanctions issued which Shenandoah is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Shenandoah's educational or employment program or activity, to the extent Shenandoah is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Shenandoah to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

34. Statement of the Rights of the Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited sexual harassment or retaliation made in good faith to Shenandoah officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.

- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated Policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever practicable.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Shenandoah officials.
- The right to have Shenandoah policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Shenandoah officials from reporting sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by Shenandoah officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Shenandoah authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Shenandoah officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a Shenandoah-implemented no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
 - Relocating an on-campus student's housing to a different on-campus location
 - Assistance from Shenandoah staff in completing the relocation

- o Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - o Transportation accommodations
 - o Visa/immigration assistance
 - o Arranging to dissolve a housing contract and a pro-rated refund
 - o Exam, paper, and/or assignment rescheduling or adjustment
 - o Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - o Transferring class sections
 - o Temporary withdrawal/leave of absence (may be retroactive)
 - o Campus safety escorts
 - o Alternative course completion options
- The right to have Shenandoah maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair Shenandoah's ability to provide the supportive measures.
 - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when practicable.
 - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
 - The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
 - The right not to have irrelevant prior sexual history or character admitted as evidence.
 - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
 - The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
 - The right to receive a copy of the investigation report, including all factual, Policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
 - The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, the Title IX Coordinator, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Shenandoah representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the preponderance of the evidence standard; to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision, delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by Shenandoah is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by Shenandoah.
- The right to a fundamentally fair resolution as defined in these procedures.

35. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as reasonably practicable, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The following are the typical sanctions¹⁸ imposed upon students or organizations singly or in combination for violations of the Policy:

- Educational task: student must complete an assignment that benefits self, campus or community. This sanction may include training on sexual harassment and appropriate interactions with peers and partners.
- Referral: requires the student seek appropriate guidance or resources for his/her success.
- Community restitution project: work projects on or off campus.
- Restitution: reimbursement by the student to cover the cost of repair or replacement of damaged or misappropriated property.
- Relegation to final room selection: student loses the opportunity to participate in the annual room selection (lottery) process.
- Removal from University housing: required removal from University housing with final approval from the Dean of Students (or designee) and without the refund of room fees. Once assigned this sanction, a student must move within a designated time frame (usually 48 hours unless otherwise permitted), after which the removed student cannot enter University housing without permission from the Dean of Students (or designee).
- Removal of property: required removal of property that contributes to a harmful

¹⁸ Shenandoah policies on transcript notation will apply to these proceedings.

environment, for example a hostile sexual environment.

- University housing relocation: requires the student to move to another room, hall or quad with approval from the Director of Residence Life (or designee). A student must relocate within 24 hours, after which he/she cannot enter the building from which he/she was removed throughout the term of the sanction without permission from the Dean of Students (or designee).
- Written warning: official record that a student has been warned about behavior
- No-contact order: student is prohibited from having any direct or indirect contact or contact via a third-party with a particular person. Violation may result in suspension.
- Restriction of activities or privileges: participation in any and/or all organized University activities other than required academic endeavors are restricted for a designated period of time.
- Conduct probation: a period of self reflection during which a student is on official warning that subsequent violations of University rules, regulations or policies are likely to result in more severe sanctions, including suspension or dismissal from the University.
- Conduct suspension: a temporary cancellation of a student's enrollment at Shenandoah University with approval from the Vice President for Student Affairs (or designee). Once assigned this sanction, a student is immediately removed from classes and banned from University property. A student cannot enter University property during his/her term of suspension without prior permission from the Vice President for Student Affairs (or designee) nor graduate. Any classes taken at another institution while suspended typically cannot be transferred to Shenandoah University unless given special permission by the Vice President of Student Affairs (or designee) and the Academic Dean. If a student lives in campus housing, he/she has 24 hours to vacate his/her campus residence.
- Campus ban: student is banned from being present on either the entire campus or specified areas of the campus.
- Dismissal from the University: a permanent cancellation of a student's enrollment at Shenandoah University with approval from the vice president for student life (or designee). Once assigned this sanction, students are immediately removed from classes and banned from any University property. A student cannot enter University property once dismissed without prior permission from the Vice President for Student Affairs (or designee) nor re-enroll or graduate from Shenandoah University.
- A prominent transcript notation for any offenses of sexual violence.
- Additional stipulations: additional sanctions a student must complete and/or follow.

b. Employee Sanctions/Responsive Actions

Typical responsive actions for an employee who has violated the Policy include:

- Educational Experience - As a consequence of the employee's actions, their continued employment is contingent on them submitting to and actively participating in mandatory education and/or counseling that addresses their particular behaviors i.e. EAP counseling, education/training on topics such as sexual harassment, personal boundaries, gender respect, discrimination, racism, sexuality and gender, etc.

- Verbal Warning/Reprimand - The mildest form of disciplinary action is a verbal warning from the supervisor to alert the employee to a performance problem or issue, suggest a course of action, and set a timeframe for resolving the problem. It is recommended that the supervisor make a written note of the meeting indicating the date, time and a brief summary of the discussion.
- Written Warning/Reprimand - First level of formalized disciplinary action - can be initiated by a supervisor and/or director and/or vice president. Utilized for infractions that are a step more severe, multiple infractions, or failure to comply after a verbal reprimand. The concerns/infractions are documented in detail, as well as the circumstances of the discussion, and any corrective action plan expected going forward.
- Censure - A written condemnation by Shenandoah University administration of a negative action or behavior by an employee. It is placed in the employee's file and sets the expectation that such an action/behavior will not happen again.
- Employee Action Plan - The appropriate supervisor/director/vice president may initiate a written disciplinary action plan by using the Performance Improvement Plan form. The completed form will outline the performance problem or issue, suggest course(s) of action, set a time frame for resolving the problem, and indicate the potential consequences that may occur if the problem is not resolved. The appropriate vice president and the director/supervisor must sign the written reprimand. Performance Improvement Plan form is available from the Office of Human Resources.
- Temporary or permanent reassignment of job responsibilities.
- Probation – Places an employee in a probationary status for a predetermined period of time as a result of their previous negative actions. The employee would be made aware that for the duration of the probationary period he or she would be under close scrutiny, and any repeat of those past prohibited actions would result in further sanctions; in all likelihood dismissal.
- Demotion - A written notification of the reason for the demotion will be provided to the employee, which may include a warning of any further disciplinary action, if the demotion was not voluntary.
- Suspension – As a result of the employee's negative behavior they would be prevented from conducting their job and from being on campus property for a predetermined amount of time. The suspension can be paid or unpaid depending on the circumstances. The employee is still considered an employee and would have their job once the term of suspension ended. Suspension is generally recognized second only to dismissal in severity.
- Dismissal - This is the forced termination of the individual's employee relationship with Shenandoah University. It is the most severe sanction.

36. Withdrawal or Resignation While Charges Pending

a. Students

If a student has an allegation pending for violation of the Policy, Shenandoah may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Shenandoah, the resolution process ends, as Shenandoah no longer has disciplinary jurisdiction over the withdrawn student. If a student withdraws while under investigation for an offense involving sexual violence¹⁹ a prominent notation will be placed on that student's transcript.

However, Shenandoah will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Shenandoah. Such exclusion applies to all Shenandoah campuses. A hold will be placed on their ability to be readmitted. They may also be barred from Shenandoah property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Shenandoah unless and until all sanctions have been satisfied.

b. Employees

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Shenandoah no longer has disciplinary jurisdiction over the resigned employee.

However, Shenandoah will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Shenandoah, and the records retained by the Director of Human Resources will reflect that status.

¹⁹ "Sexual Violence" means physical sexual acts perpetrated against a person's will or against a person incapable of giving consent. VA § 23.1-900.

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

37. Appeals

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

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

a. Grounds for Appeal

Appeals are limited to the following grounds:

1. 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(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
4. The sanction is inappropriate for the violation.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeals official and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeals official will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and

involves them. All responses will be forwarded by the Chair to all parties for review and comment, usually within three (3) business days .

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeals official and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision- maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties, usually within three (3) business days.

Neither party may submit any new requests for appeal after this time period. The Appeals official will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and will render a decision no more than five (5) business days after receiving all requested evidence and solicited responses, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Shenandoah is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Shenandoah is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Shenandoah-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. Shenandoah may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s)

only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with new Decision-makers.
- The results of a new hearing can be appealed, once, on any of the four available appeal grounds.
- In cases in which the appeal results in reinstatement to Shenandoah or resumption of privileges, Shenandoah shall use reasonable efforts to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts

- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will take reasonable steps to ensure the Respondent is not effectively denied their educational access. Shenandoah will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Shenandoah's ability to provide these services.

39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-makers, including the Appeal Chair (if applicable).

Failure to comply with the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including, with respect to students, suspension, expulsion, and/or termination from Shenandoah with a notation on a student's official transcript. Noncompliance charges may be processed through the student code of conduct or staff/faculty handbooks.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

40. Recordkeeping

Shenandoah will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to

- Shenandoah's education program or activity;
4. Any appeal and the result therefrom;
 5. Any Informal Resolution and the result therefrom;
 6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Shenandoah will make these training materials publicly available on Shenandoah's website; and
 7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to Shenandoah's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Shenandoah will also maintain any and all records in accordance with state and federal laws.

41. Disabilities Accommodations in the Resolution Process

Shenandoah is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Shenandoah's resolution process.

Anyone needing such accommodations or support should contact the Director of Learning Services if a student, or the Director of Human Resources if an employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodation(s) is/are appropriate and necessary for full participation in the process.

42. Revision of this Policy and Procedures

This Policy and procedures supersede any previous Policy(ies) addressing sexual harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. Shenandoah reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on

the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

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

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

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

APPENDIX A: POLICY EXAMPLES

Examples of Sexual Harassment

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty- student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

Examples of Stalking

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’s car, both on-campus and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the tutor did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill’s incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and

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

- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

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