



# FIVE TOWNS COLLEGE

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## FIVE TOWNS COLLEGE

### TITLE IX: GRIEVANCE POLICY AND PROCEDURES

Policy Regarding Sexual Harassment and Misconduct for Students, Staff and Faculty  
(FTC institutional policy adheres to these procedures for grievances under Title IX  
and NYS Education Law Article 129-B)

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#### A. PURPOSE & SCOPE:

To ensure a safe and secure living, learning and working environment, Five Towns College (FTC) takes its responsibility to comply with the provisions of Title IX seriously. FTC has endeavored to establish compassionate, consistent, clear, and compliant policies and procedures that are prompt and equitable, have a balanced approach, and allow for adequate, reliable and impartial investigation. Thus, FTC is committed to maintaining a safe educational environment that maximizes students, faculty, and staff welfare and development. FTC is intent on supporting a culture of education, prevention, intervention and a climate that encourages reporting, respect and trust in the institutional Title IX Response.

Title IX states, in part, that:

“No person in the United States shall, on the basis of sex excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . . .” As such, sexual harassment and misconduct towards students, staff and/or faculty is considered to be a form of discrimination prohibited under Title IX. To comply with the statute, the College is dedicated to providing prompt and equitable responses to any and all complaints alleging violations under the law as set forth below.

Any member of the College community who believes they have sustained sex based discrimination or harassment is encouraged to report the incident to appropriate personnel. Five Towns College has a Title IX Team consisting of the FTC Title IX Coordinator and several Deputies who are visible and accessible to individuals who believe they have sustained a violation under the law. Complainants should know that the members of the Title IX Team are required under the law to make a report if a finding is made. Upon the filing of a formal report with the Title IX Coordinator and/or any member of the Title IX Team, the College will have actual knowledge of the alleged violation and will be obligated to respond.

In the alternative or, even just initially, individuals are made aware of and advised of counseling options for confidential reporting. In addition to being apprised of the different reporting options, Complainants are informed of available supportive measures, including counseling and emotional support and the necessity to preserve evidence. In addition, Complainants have the right to make a report to Public Safety, local law enforcement, or choose not to report the incident. Individuals have the right to report the incident to the College, to be protected by the College from retaliation for reporting an incident, and to receive assistance and resources.

**On and Off-Campus-**While Five Towns College is empowered to take appropriate action to comply with its requirements under Title IX for any incidents that occur on campus, it also reserves the discretion to take appropriate action regarding off-campus incidents if the

incident is alleged to have occurred during an FTC education program or activity in the United States. An FTC program or activity includes locations, events, or circumstances in which FTC exercises substantial control over both the Respondent and the context in which the incident occurred. This also includes any building owned or controlled by a student organization that is officially recognized by FTC. In all instances, Five Towns College will respond within prompt time frames for the complaint process. Both the Complainant and the Respondent will be given periodic status updates, receive notification of the outcome, and be informed of their right to appeal.

Included in these Grievance Procedures are mechanisms for remedies that address both individual and community safety, implement no-contact orders, provide academic support, adjust academic schedules or living arrangements, provide counseling or emotional support, and allow for other equitable solutions or responses for both parties. Interested parties should be aware that Title IX mandates that all Respondents are entitled to a presumption of innocence and that the burden of proof lies with FTC in determining whether or not the Respondent is responsible for a violation of the College's Title IX policy. These Grievance Procedures apply the "preponderance of the evidence" standard or a standard that means "more likely than not"; in any event, a fair and balanced approach that concerns equitable treatment for the involved parties i.e. Complainants, Respondents and third- part witnesses, is followed.

The grievance procedures set forth below are geared particularly for the adjudication of complaints that may fall under the auspices of Title IX and involve FTC students, faculty, staff or third-party witnesses. The Five Towns College Title IX Coordinator and/or the Deputy Title IX Coordinators noted below a/k/a the **FTC Title IX Team** should be contacted with any inquiries:

**The Five Towns College Title IX Coordinator:** Dana Gioe, J.D. (631) 656-2189

## **Title IX Deputies:**

Janet Kaplan, J.D. (631) 656-2129

Krysti O'Rourke, M.P.A. (631) 656-2163

Michael Cavalli, M.S.W. (631) 656-3127

Deseree Wiltshire, M. A. (631) 656-2185

Angela Jasur, M.A. (631) 656-3190

Hali Bekofsky, B.F.A. (631) 656-3117

## **B. DEFINITIONS (alphabetical order):**

**Consent** involves explicit communication. **Affirmative consent** is a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidations, force, or threat of harm.

- A sexual encounter is considered consensual when individuals each willingly and

knowingly engage in sexual activity. Consent cannot be obtained through the use of coercion. Coercion is the use of pressure, manipulation, substances, force and disregarding objections of another party to engage in sexual activity. Consent must be clearly and unambiguously communicated.

- One who is incapacitated (whether by alcohol or drug use, disability, unconsciousness, or is otherwise helpless) cannot consent to sexual activity. In this procedure, determining whether an individual was incapacitated may depend on the perspective of an objective and reasonable interpretation of events to consider whether a sober individual in the respondent's position could know or should have known that the complainant was incapacitated.

**Lack of Affirmative Consent** exists where the respondent knew, or a reasonable person in the position of the respondent should have known, of the other person's inability to consent. There is no Affirmative Consent where the respondent knew, or a reasonable person in the position of the respondent should have known, that the complainant was unable to make an informed rational judgment due to his or her use of alcohol or other drugs.

**Dating Violence** means violence by a person who has been in a romantic or intimate relationship with the complainant (victim). Whether there was such relationship will be gauged by its length, type, and frequency of interaction. Dating violence can be a single act or a pattern of behavior in relationships. The parties may be in short or long-term relationships (current or former) intended to provide some emotional/romantic and/or physical intimacy.

**Discrimination** occurs when one experiences negative or adverse conduct based on characteristics protected in this policy and applicable local, state, and federal laws, where such conduct has the effect of denying or limiting one's ability to benefit from and fully participate in educational programs or activities or employment opportunities.

**Domestic Violence** includes assorted violent misdemeanor and felony offenses committed by the complainant's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law. Domestic violence can be a single act or a pattern of behavior in relationships. The parties may be in short or long-term relationships (current or former) intended to provide some emotional/romantic and/or physical intimacy.

**Gender-Based Harassment** includes acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on gender, gender identity, or gender-stereotyping. Gender-based harassment can occur when an individual or group is harassed either for exhibiting stereotypical characteristics of a particular sex or failing to conform to stereotypical notions of masculinity or femininity.

**Gender-Based Misconduct** comprises a broad range of behaviors focused on sex and/or gender discrimination that may or may not be sexual in nature. Sexual harassment, sexual assault, sexual exploitation, gender-based harassment, stalking, domestic violence and dating violence are forms of gender-based misconduct under this policy. Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship (current or former). Gender-based misconduct can be committed by men or by women, and it can occur between people of the same or different sex or gender identity.

**Grievance** related to Title IX and which entitles the individual(s) to the procedures herein is, generally, something considered as grounds for a complaint.

**Harassment** is harassment on the basis of a protected classification, including harassment of an individual in connection with a stereotyped group characteristic, or because of that person's identification with a particular group. Harassment, a form of discrimination, consists of

either sexual harassment or other unlawful harassment because of a protected characteristic or belief. Protected characteristics or beliefs under this Policy are as follows: race, color, religion, sex, sexual orientation, gender identity or expression, age, national or ethnic origin, physical or mental disability, marital or veteran status or any other characteristic protected by state or federal laws.

Such harassment is any conduct, verbal, nonverbal, or physical, on or off campus, that has the effect, because of its severity and/or persistence, of unreasonably interfering with an individual or group's educational or work performance or that creates an intimidating or hostile educational, work or living environment. Discriminatory harassment includes, but is not limited to epithets or slurs, negative stereotyping, denigrating jokes and display or circulation in the working, learning, or living environment (including electronic transmission) of written or graphic material.

**Retaliation** is any action to penalize, intimidate, harass, or take adverse action against a person who makes a report of discrimination or harassment, participates in an inquiry or investigation or otherwise asserts rights protected by non-discrimination laws.

**Sexual Assault** is any non-consensual intentional physical contact of a sexual nature, such as unwelcome physical contact with a person's genitals, buttocks, or breasts, or any form of sexual intercourse without consent. Rape is a form of sexual assault. Sexual assault occurs when the act (non-consensual sexual contact or non-consensual sexual intercourse) is committed by: a) physical force, violence, threat, or intimidation; b) ignoring the objections or without the consent of another person; c) causing another's incapacitation through intoxication or impairment through the use of alcohol or other drugs; and/or d) taking advantage of another person's incapacitation by alcohol or drug use, disability, unconsciousness or helplessness which renders them unable to give consent. In accordance with New York State law, a person under the age of

17 lacks the capacity to give consent. (See the definition of Consent below).

**Sexual Exploitation** is non-consensual sexual abuse or exploitation of another, such behavior that does not otherwise constitute another specifically defined behavior. Examples of sexual exploitation include, but are not limited to, non-consensual use of electronics to capture, reproduce or share images of a sexual nature without consent of parties involved, public indecency or exposing genitals to others without consent or engaging in ‘peeping’ (observing another when privacy would be reasonably expected) without consent.

**Sexual Harassment** is unwelcome conduct of a sexual nature. Title IX states that sexual harassment is:

1. The conditioning of an aid, benefit or service of the College on an individual’s participation in unwelcome sexual conduct (i.e. *quid pro quo*);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College’s education program or activity; and
3. Any instance of sexual assault, dating violence, domestic violence or stalking.

Sexual harassment can occur regardless of the relationship, position or respective sex of the parties, same sex harassment violates this policy. Harassment because of one's actual or perceived sexual orientation also constitutes a violation of this policy. Violation of this policy also includes harassment by a student of a faculty member or a subordinate employee of his/her supervisor.

**Stalking** means a course of conduct directed at a specific person that would cause a reasonable person to feel fear for her, his or others’ safety or to suffer substantial emotional distress. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including

fear and apprehension. Stalking behaviors may include: pursuing or following, non- consensual (unwanted) communication or contact, including face-to-face, telephone calls, voice messages, electronic messages, text messages, unwanted gifts, etc., trespassing, and surveillance or other types of observation.

### **C. ALCOHOL AND DRUG AMNESTY**

Of paramount importance at Five Towns College is the health and safety of every student. Five Towns College recognizes that students who may have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including, but not limited to, domestic violence, dating violence, stalking or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Nonetheless, students are strongly encouraged to report domestic violence, dating violence, stalking, or sexual assault to institutional officials. Thus, a bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Five Towns College's officials or law enforcement will not be subject to consequences under the College's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **D. CONFIDENTIAL RESOURCES VS. PRIVACY**

This issue of confidentiality is important for individuals who believe they have sustained discrimination or harassment under Title IX to understand. Students or employees who wish to obtain confidential assistance, support, guidance as well as emotional support may do so by speaking with professionals who are obligated by law to maintain confidentiality. Under state law, confidential resources generally include medical providers, mental health providers, clergy and rape crisis counselors. At Five Towns College, this specifically means that professionals in the Counseling Center are required to maintain confidentiality as well as other off-campus Counseling Services.

Individuals i.e. students or employees are, therefore, apprised that reports of sexual assault, harassment or discrimination that may fall under Title IX when communicated to other institutional employees of the school may not be confidential but that privacy will be protected as much as the law provides. This is because Title IX requires that any school employees i.e. faculty, staff, administrators, student employees responsible for student or employee welfare are required to share with a member of the Title IX Team any report of sexual harassment or misconduct they receive or of which they become aware. This may include resident advisors, resident directors, peer advocates or educators and/or members of the Title IX Team.

## **E. REPORTING OPTIONS**

Five Towns College supports the goal of centralized reporting to ensure consistent application of this Title IX Policy, to permit prompt and equitable resolution of these matters, eliminate harassment, prevent recurrence and address its effects. FTC encourages dissemination of this Policy and educating College constituents of the reporting options thereunder. Therefore, in addition to being posted on the institution's website, students/employees are encouraged to consider these reporting options and, then, consult with the Title IX Coordinator or members of the Title IX Team, the Office of Public Safety, the Office of the Dean of Students or the Associate Director of Residence Life. Further, FTC is obligated to take all reasonable steps to investigate formal reports and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. Individuals can be assured of no retaliation and that the institution will protect them from any fear of reprisal. Individuals are encouraged to take the option that they choose.

It needs to be clear then that complainants who make a report to any College employee will trigger the centralized review process. While those reports will be kept private, they are not afforded absolute legal confidentiality protections. A report to a College employee is required to be reported to the Title IX Coordinator. Only reports or conversations or support from the professionals in the College Counseling Office or off-campus Counseling Services are ensured to be confidential; in any instance where an individual is either not sure to report or not ready to report, that reporting option should be considered first. It is, thus, imperative that the College constituents are aware of these reporting options.

## **F. TITLE IX GRIEVANCE/APPEAL PROCEDURES**

### **FILING A REPORT**

Any report of alleged gender-based misconduct by a student, member of the faculty, staff or administration of Five Towns College or a person who is not a member of the College community can be filed with the Title IX Coordinator or other designated contact noted within this Policy Regarding Sexual Harassment and Misconduct for Students, Staff and Faculty. All members of the community are encouraged to consult with the Title IX Coordinator if they are unsure about how or what information to report. The Title IX Coordinator is obligated to act on formal complaints filed with a member of the Title IX Team. A formal complaint is a document, physical or electronic, filed in person, by mail or by electronic mail by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the school investigate the allegation. At the time of the filing, the Complainant must be participating or attempting to participate in an FTC education program or activity. It is important to note, however that not every report leads to a disciplinary process. Each report is reviewed individually. Information can be shared with members of the FTC Title IX Team via email noted on the College's website.

In cases where the gender-based misconduct is reported anonymously (e.g. through the online report without including information of the reporting party) or by an observer/concerned individual to the Title IX Coordinator, the Complainant will be notified by the Title IX Coordinator that a report has been received. The Title IX Coordinator will meet with the Complainant to discuss her/his options and available resources at the College and in the community. The Complainant has a right to withdraw involvement or withdraw complaint, however, in some circumstances, the College nevertheless may need to investigate, such as where it is necessary to

ensure the safety of the College community. In such instances where the complainant withdraws the complaint or from involvement in the process, or where the Title IX Coordinator has signed the formal complaint, the Title IX Coordinator is not a Complainant or a party during the grievance process, and must remain free from conflicts and bias although the College may proceed and serve as a complainant in the matter.

#### ADMINISTRATIVE CONTACTS FOR MAKING A REPORT

Anyone wishing to file a report of gender-based misconduct, seeking information, accommodation and/or resource information should contact the Title IX Coordinator. This may include reports of gender-based misconduct by a visitor to or vendor of campus, or when the identity of the alleged perpetrator is unclear. Anyone may consult with the Title IX Coordinator regarding reporting or may file a report electronically by emailing the Title IX Coordinator.

The Title IX Coordinator is responsible for coordinating the College's response, disciplinary process, and for working with all involved parties. The Title IX Coordinator will assist in identifying options for complainants in situations when discipline of the Respondent is outside of the College's jurisdiction (including students of other institutions).

#### RIGHTS OF REPORTING INDIVIDUAL/COMPLAINANT

Upon receipt of a report of an incident of sex or gender-based misconduct the Title IX Coordinator will insure the reporting individual has been advised of their rights (1) to make a report to local law enforcement and /or state police or choose not to report; (2) to report the incident to campus authorities; (3) to be protected from retaliation by the College for reporting an incident; and (4) to receive supportive measures from the College. The reporting individual can choose to meet with the Title IX Coordinator to discuss these rights.

Individuals reporting acts of sex or gender-based misconduct may also choose to file a report with local law enforcement. The College system and police/legal system work

independently from one another. Individuals can file reports with the College, or local law enforcement or with both systems simultaneously. Individuals also have the right to decline reporting. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not determinative of whether gender-based misconduct, under this policy, has occurred.

#### ADVISOR OF CHOICE

Complainant and Respondent each have the right to be accompanied to any related meeting or proceeding by an advisor of their choice. An advisor may be an attorney or an individual who attends as a supportive presence. An advisor may take notes and quietly confer with the party being advised, and the advisor must be present for the purpose of conducting cross-examination during any disciplinary hearing conducted in accordance with these policies. If a party does not have an advisor at the hearing, the College will provide one solely for the purpose of conducting the required cross-examination. The parties and their advisors will be provided with all evidence gathered during an investigation that is directly related to the allegations raised in the formal complaint. Cross-examination during the hearing must be conducted by the parties' respective advisors only, *however*, any party refusing to submit to cross-examination *may still* have their statements relied upon by the decision-maker. The decision maker will review questions posed by the advisors to make and articulate decisions on their relevance, particularly with respect to prior sexual history. All hearings must be conducted in a live setting, although the parties need not be situated in the same room so long as they have the ability to see and hear each other in real-time from their respective locations. Expert witnesses are permitted. However, witnesses or others involved in this process are not permitted to bring another person to any meeting or hearing.

Although the parties are not required to bring their advisor to all meetings outside of the

live hearings adjudicating formal complaints, utilizing the same advisor throughout the process, unless there are extenuating circumstances, allows the process to move forward in an efficient fashion. In the event that a party wants to make a change to their advisor, they must provide notice to the Title IX Coordinator.

## TIME FRAME

The College encourages prompt reporting, but does not limit the time frame for filing a report of gender-based misconduct. Reports can be submitted at any time following an incident, although the College's ability to take any action may be adversely affected or limited by the length of time between the alleged incident and the report. The current relationship to the alleged perpetrator may also limit the available range of disciplinary action (e.g., if an individual is no longer employed by the College or enrolled as a student). Once a report is received, projected timelines are provided in the steps of the procedure outlined below.

## JURISDICTION

The College is able to respond formally to alleged incidents of gender-based misconduct:

- that occurred or may have a continuing effect on campus,
- that occurred in the context of official College education programs or activities.  
Education programs or activities include locations, events, or circumstances over which the College exercises substantial control over with the Respondent and the context in which the misconduct occurred, as well as any building owned or controlled by a student organization that is officially recognized by the College.
- that occurred against a person in the United States who is participating or attempting to participate the education program or activity of the College and where the Complainant and Respondent are students, members of the faculty, staff or administration of the College.

If the Respondent is affiliated with the College, but not a College student, faculty or staff member, procedures of the affiliated institution may apply to the investigation and disciplinary process.

If the offender is unknown or is not a member of the College community, the Title IX Coordinator (or designee) will assist individuals in identifying appropriate on and off campus resources and/or provide access to local law enforcement authorities if the individual would like to file a report. In addition, the College may take other actions such as providing interim measures or accommodations to protect the individual and the campus community, regardless of whether there is a disciplinary process to proceed.

## RETALIATION

Any action by a member of the Five Towns College community to penalize, intimidate, harass, take adverse action against a person who makes a report of discrimination or harassment, participates in an investigation or otherwise asserts rights protected by non-discrimination laws is prohibited. Retaliation may be found even when the underlying report does not constitute discrimination or harassment in violation of policy.

Any person who believes that he or she has experienced retaliation for reporting discrimination or harassment, participating in an investigation, or for acting as an advocate should immediately contact the Title IX Coordinator or Human Resources. The College takes such reports seriously, investigates reports of retaliation, and takes strong disciplinary action against individuals found to have engaged in retaliation, as appropriate. All members of the College community are expected to cooperate with investigations of violation of this policy.

## INTERIM MEASURES

Based upon the nature of a report, and particularly where the presence of the Respondent

may be a continuing threat to the health or safety of the community, the College may impose restrictions, or interim measures, during the investigative process, up to or including suspension or other access restrictions. These measures are non-punitive, non-disciplinary, and will not be unreasonably burdensome to either party as they are designed solely to ensure equal educational access, protect the safety of the College community, or deter sexual harassment. Requests for specific measures to be considered can be discussed with the Title IX Coordinator.

When the Respondent is a student, the College may issue a “no contact directive” consistent with College policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of the College policy subject to additional conduct charges. The College may work with both parties to establish an appropriate schedule for the parties to access applicable College buildings and property. No contact directives may also be imposed when the Respondent is a staff or faculty member of the College.

During an investigation and until resolution of the matter, other reasonable and available interim measures and accommodations may be provided, including bans from campus, and/or appropriate changes in academic, housing, transportation or employment or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment. Failure to adhere to the parameters of any interim measures is a violation of policy and may lead to additional disciplinary action.

Both the Respondent and the Complainant shall, upon request to the Title IX Coordinator, be afforded a prompt review of interim measures that may affect both parties, including the ability to provide information and/or evidence, reasonable under the circumstances, of the need for reviewing terms of a no contact order or parameters of other interim measure, including interim suspension, as well as including proposed potential modification.

## ACCOMMODATIONS

All students affected by experience of gender-based misconduct, whether or not the matter is to be adjudicated by the College, may request accommodations to support safety, well-being, and access to education. The Title IX Coordinator will work with the student, in light of available information at the time of the request, to identify reasonable accommodations.

Accommodations may include, but are not limited to housing reassignment, adjustments to academic or campus work schedules, providing access to tutoring or academic support, or allowing a student to withdraw from or retake a course without penalty.

### **Informal Resolution Options**

Informal resolution options, such as mediation and restorative justice, are available in cases where a formal complaint has been filed and both parties have given voluntary, informed, written consent to attempt informal resolution. The informal resolution process is not available in cases where an employee is alleged to have sexually harassed a student.

## INDEPENDENT INFORMAL RESOLUTION

In cases involving some forms of alleged gender-based misconduct, an individual may choose to deal with the alleged offender directly through a face-to-face discussion, a personal-telephone conversation, e-mail correspondence, or other written correspondence. In some cases, this approach may resolve the situation; in others, it may be ineffective or place the individual in an uncomfortable, insecure, or compromised position. Under no circumstances should an individual feel pressured to address the alleged offender directly or otherwise handle the matter alone, and a decision not to confront an individual she/ he believes to be discriminatory or harassing will not be viewed negatively. If efforts to address a matter directly prove unsuccessful or impractical, an individual may choose to meet with the Title IX Coordinator to pursue other methods of resolution as described in these procedures.

## FACILITATED INFORMAL RESOLUTION

In cases involving some forms of alleged gender-based misconduct, the Title IX Coordinator (or designee, in collaboration with the Title IX Coordinator) will determine whether there is an appropriate facilitated informal resolution mechanism that may be considered based on information provided about the incident. This may include mediation and/or restorative justice accomplished via shuttle diplomacy, facilitated conversation, and/or training and education for individuals or groups.

Either party may terminate the facilitated informal resolution process at any time and choose to pursue or resume the formal resolution process instead. If the facilitated informal process results in a resolution, both parties will receive outcome notification that the process has concluded and the case will be closed. If the parties are unable to reach a resolution in a timely manner, or if either party requests to terminate the facilitated informal resolution process, the investigation and disciplinary process will proceed. It is anticipated that facilitated informal resolution efforts will be prompt and, generally, should be completed within forty-five (45) days; unless both parties agree to an extension of time and the Title IX Coordinator approves such extension.

### **Inquiry and Investigation**

#### INQUIRY

Promptly following the receipt of a formal report from a Complainant, information will be reviewed by the Title IX Coordinator to determine if there may be reason to believe that a policy may have been violated. An initial inquiry will be undertaken by the Title IX Coordinator, if necessary, to determine whether a formal investigation must commence. If further information is necessary, it may involve prompt discussions with the Complainant and others, as appropriate. The Complainant and Respondent may be accompanied by an advisor of choice to all

meetings. An advisor may attend, all meetings and interviews at the discretion of the parties they advise. However, should the case proceed to a live hearing, each party's respective advisor must be present at such hearing for the purposes of conducting cross-examination in accordance with federal regulations regarding Title IX. The Complainant may be offered reasonable accommodations and will be offered supportive measures as appropriate, regardless of whether or not there is reason to proceed with an investigation.

If the findings of the initial inquiry indicate there is not sufficient reason to believe a violation may have occurred, the Complainant will receive prompt notice of this outcome and rationale, and will be afforded the opportunity to appeal the decision not to commence a formal investigation. Inquiry is a prompt process that should not take longer than five to ten (5-10) days. In cases of investigation of an employee as Respondent, the employee's supervisor may be notified of the investigation at the same time the Respondent receives notification.

Vendors or other agencies in contract with the College will be promptly notified if any of their employees are alleged to have violated this policy, and such employees may be banned from College properties and may be subject to action deemed appropriate by their respective employer. Restrictions regarding access to College property or events may be imposed.

The Respondent and Complainant, with their respective advisor of choice, will be given the opportunity to meet separately with the Title IX Coordinator (or designee) to review the policy and procedure, as well as related rights. A complete list of Complainant and Respondent Rights are included at the end.

## FORMAL INVESTIGATION

Reports of alleged gender-based misconduct will be equitably investigated in a fair, impartial, thorough and prompt fashion, providing a meaningful opportunity for participants to be

heard. Investigation will be conducted by individuals without a conflict of interest or bias for or against either party. Every effort is made to resolve complaints within sixty (60) days. The formal investigation process may vary depending upon the nature and complexity of the case and the time of year (and availability of parties). Typically the investigation process may take 30-40 days (inclusive of initial inquiry, if applicable).

A Title IX Investigator(s) (who will be either the FTC Title IX Coordinator or a member(s) of the FTC Title IX Team) will interview the Complainant, Respondent, and available witnesses, as appropriate. The Complainant and Respondent may each have an advisor of choice present at all meetings and interviews. The Investigator will also gather any pertinent evidentiary materials (this may include, but is not limited to, emails, written or electronic documents or photographs).

During the investigation process, both the Complainant and the Respondent will have an equal opportunity to provide the FTC Title IX Investigator(s) with relevant evidence and/or specific witness information. It is possible that more than one meeting may be necessary for Complainant and Respondent to have opportunity to respond to information obtained.

The FTC Title IX Investigator(s) will prepare an investigative report that will include a summary of relevant information of each interview, provide a summary of factual information, and include any relevant documentation collected. It should be noted that some information disclosed during investigation may not be relevant or appropriate to include in the investigative report. Specifically, the parties' sexual history with anyone other than each other (to the extent relevant to the complaint) or disclosure of medical or mental health conditions, diagnoses, and/or treatment generally will not be included.

The Complainant and Respondent and their advisors will each receive copies of all evidence gathered that is directly related to the allegations as well as the investigative report that

fairly summarizes the relevant evidence, either in electronic format or hardcopy, allowing at least ten (10) days for the parties to inspect, review, and provide a response. An impact statement may be provided, in writing, to be provided for review by the Adjudicator. The Adjudicator at FTC is a member (s) of the Title IX Team who did not participate in the investigation or other qualified member of the FTC Administration where appropriate. The investigative report is then delivered to the Adjudicator for review and adjudication.

In some instances, during or at the conclusion of the investigation, the parties may voluntarily agree to end the formal process and utilize one of the informal resolution processes described above. Where informal resolution is appropriate for the circumstances, the Title IX Coordinator will make a decision about whether the matter may be resolved through an informal process. In addition, should it be determined that the information reported and investigated is not appropriate for consideration through these Title IX procedures, a decision to refer the matter for an institutional disciplinary proceeding may be made.

At any point, the College may institute community-based efforts such as educational initiatives and/or trainings as deemed appropriate for prevention.

#### INDEPENDENT INVESTIGATION

The College, at the discretion of counsel, may conduct an investigation independent of, or in addition to, the procedures provided herein at any time. The investigation may involve complaints or allegations concerning gender-based misconduct against the College or any of its employees or students.

#### **Adjudication Process**

#### ADMINISTRATIVE RESOLUTION

Upon review of the investigative report, the Respondent will be given the opportunity to

respond to the alleged violation of policy in the following ways: 1) No Response; 2) Not Responsible; or 3) Responsible.

If the Respondent accepts responsibility, the FTC Title IX Coordinator or Title IX Team members will be notified, and both parties will receive notification and that the matter has been forwarded for sanctioning.

If the Respondent declines responsibility, or chooses not to respond, the Complainant will be notified and the case will be forwarded to the FTC Title IX Coordinator or member(s) of the Title IX Team for review and adjudication.

## REVIEW OF INVESTIGATIVE FINDINGS

The FTC Title IX Team Adjudicator(s) is charged with fairly, promptly and impartially determining, based on a preponderance of the evidence, whether it is more likely than not that policy has been violated upon a review of the investigative materials. FTC Title IX Team members who do not possess a conflict of interest or bias for or against either party will conduct the adjudication that will take place at the conclusion of a live hearing in which both parties' advisors are present for the purposes of cross-examining witnesses. At the live-hearing, each party's advisor is permitted to ask the other party all relevant questions and follow-up questions, including that challenging credibility. Cross-examination at live hearings must be conducted directly, orally, and in real time by the parties' advisors, never by the parties themselves. At the request of either party, the College must arrange for the entire live hearing (including cross-examination) to take place with the parties located in separate rooms using technology enabling the parties to see and hear each other. All cross-examination questions must be relevant. Therefore, the decision-makers/Adjudicator(s) must first determine whether the question is relevant and provide the party's advisor with the rationale for their relevance determination. If a party does not have an advisor present at the live

hearing, the College will provide an advisor of the College's choice without fee or charge to that party in order to conduct the required cross-examination on behalf of that party. Advisors provided by the College may or may not be attorneys. A party with concern about a conflict of interest or bias should contact the Title IX Coordinator.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s)/Adjudicator(s) *may still* rely on any statement of that party or witness when reaching a determination of responsibility; provided, however, that the decision-maker(s)/Adjudicator(s) cannot draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the College, any or all the parties, witnesses, and other participants, may appear at the live hearing virtually. The College will create an audio or audiovisual recording, or transcript, of any live hearing. The FTC Title IX Team Adjudicator(s) will review the investigative report and materials within five (5) days of delivery. If clarification is needed on any of the materials, the FTC Title IX Team member(s) and/or Title IX Coordinator will assist the Title IX Team in obtaining this. Though it is typically not necessary, consultation with the Title IX Coordinator to request further information from either party may be undertaken. The parties and/or any of the witnesses may be asked to clarify information in the investigative materials. If such follow up is necessary, the Complainant and the Respondent will again each have the opportunity to review and respond to the updated investigative report.

#### FTC TITLE IX TEAM ADJUDICATOR FINDINGS

The FTC Title IX Team Adjudicator(s) will decide, upon a complete review of the investigative report and materials and based on a preponderance of the evidence, whether there has been a violation of any gender-based misconduct policies. Preponderance of evidence means that

based on the information provided, a violation of policy was more likely than not to have occurred.

If it is determined that a violation has occurred, the Respondent is “Responsible” and the appropriate sanctions will be determined. This determination will be made within ten (10) days of receipt of the investigative report. If found “Not Responsible”, both Respondent and Complainant will be notified in writing of the outcome, rationale for the finding, and any related action i.e. communication of continued measures such as a no contact directive, and instructions about the right to appeal the outcome and/or sanction(s) to the Appeals Panel.

#### DETERMINATION OF SANCTIONS

If the Respondent has accepted responsibility or there has been made a finding of responsibility, based on review of the investigative report and related materials, the FTC Title IX Coordinator and/or Team Adjudicator(s) (or designee) will determine the appropriate sanctions.

Consideration may be given to the nature of and the circumstances surrounding the violation, prior disciplinary violations, precedent cases, College safety concerns and any other information deemed relevant. Past findings of domestic violence, dating violence, stalking or sexual assault may be admissible for consideration during sanctioning. The FTC Title IX Team Adjudicator(s) will render a written decision detailing the factual findings supporting the determination and the rationale for the sanction(s) imposed, if applicable.

The sanctioning determination will be made within five (5) days of receiving the investigative report with indication that the Respondent accepted responsibility or the FTC Title IX Team Adjudicator’s determination of responsibility. Both Respondent and Complainant will be notified in writing of the outcome, rationale for finding and sanctions, and/or remedies, as well as instructions about the right to appeal the outcome and/or sanction(s) to the Appeals Panel.

## RANGE OF SANCTIONS

Faculty, staff or administrators who are found in violation of any sex or gender-based misconduct policy are subject to disciplinary action, up to and including discharge. Students are subject to disciplinary action, up to and including suspension or expulsion. In any case, educational programming or alcohol/substance assessment may be required. Sanctions may include reassignment of work duties or location, reassignment of class meetings, reassignment of or removal from living accommodations, restrictions on contact with one another, access restrictions to College property and/or events, disciplinary probation, suspension or expulsion.

More than one sanction may be imposed.

Guests, visitors and other persons who are alleged to have engaged in sex-based or gender-based misconduct are subject to corrective action, which may include removal from campus, ban from campus, and/or termination of contractual arrangements. Vendors or other agencies in contract with the College will be promptly notified if any of their employees are alleged to have violated policy, and such employees may be banned from any or all College properties and may also be subject to action deemed appropriate by their respective employer or law enforcement. Restrictions regarding access to College property or events may also be imposed.

Regardless of how a matter proceeds in this process, a range of remedies may be made by the College, including reviewing protocol and providing or enhancing training to staff and/or students. Protective measures may also be taken, such as issuing no-contact directives or access restrictions or implementing reasonable accommodations. Accommodation requests are reviewed on a case by case basis, and may include, but are not limited to, measures such as moving a student's housing assignment, adjusting a campus work schedule, assisting with academic support, seeking extensions for assignment, or allowing a student to withdraw and/or retake a course without penalty.

## **Appeals Process**

The Respondent and Complainant may request an appeal of the decision and sanctions rendered on one of the following four grounds:

1. The party believes a procedural error occurred, which the party feels may change or affect the outcome of the decision;
2. The party has substantive new evidence that was not available during the investigation, at the time of the hearing, and/or that may change the outcome of the decision;
3. The party feels that the severity of the sanction is substantially disproportionate given the details of the case; and/or
4. the Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

Disagreement with the finding or sanctions is not, by itself, grounds for appeals.

The request for an appeal, including the grounds upon which the request is based, should be submitted in writing to the FTC Appeals Panel (as identified in the outcome letter) within five (5) business days following the date on the outcome letter. The other party will be notified if an appeal request is submitted and be provided the opportunity to respond in writing.

The Appeals Panel consists of the FTC Provost, FTC President or their designee(s).

Appeals will be conducted in an impartial manner. The Appeals Panel can determine whether a change in the FTC Title IX Team Adjudicator's decision is warranted. If a change in this decision is necessary, the Appeals Panel will review the appeal, the rationale and make a final decision. The appeals decision is final.

Appeals will not be reviewed or considered beyond the Appeals Panel. Appeals decisions will be rendered within ten (10) business days after the receipt of the formal request for appeal. Both parties will be notified in writing of appeals outcome.

## NOTIFICATION TO THE PARTIES

Both the Complainant and Respondent will be concurrently notified of results, in writing, at the following times:

1. Commencement of the Investigation Process
  - The parties will receive notice of the date, time, location and description of the alleged violation and possible sanctions related to such allegation.
2. Commencement and Conclusion of Facilitated Informal Resolution (if applicable)
  - Notice of the approval of request for independent or facilitated resolution (or termination) of such informal resolution.
3. Conclusion of the Investigation
  - After the conclusion of the Investigation, each party, accompanied by his or her advisor of choice, will be notified and provided the opportunity to review the investigative materials, in the presence of a member of the FTC Title IX Team.
4. Administrative Resolution
  - Notice of no responsibility by Respondent
  - Notice that the Respondent accepts responsibility for being “in violation” (if applicable).
  - Notice of the sanctions determined by the FTC Title IX Team Adjudicator(s) after the Respondent accepts responsibility.
5. Adjudication and/or Sanctioning Outcome
  - Notice of the FTC Title IX Team Adjudicator’s finding of “responsible” or “not responsible”.
  - Notice of the sanctions determined upon a finding that the Respondent is “responsible.”
  - Notice to both parties of the right to appeal the sanctioning.
6. Appeals Process

- Notice that either party at any point has filed an appeal in the outcome phase.
7. Conclusion of Appeals Period
- Notice of the Appeals Panel determination or final resolution of the appeals process, if applicable.

## PROCEDURAL TIMELINE

The goal of the College is to provide a prompt resolution, upon receipt of a report, seeking to resolve matters within sixty (60) days whenever possible. Best efforts will be made by the College to adhere to the time frames provided in this procedure. If time frames cannot be met, the FTC Title IX Coordinator or Title IX Team member will notify the Complainant and Respondent in writing of the reason for the delay and will provide an estimated timeline by which that step of the process will be completed.

Generally, the time line will be as follows:

- Inquiry completed within 5-10 days after the initial report
- Investigation completed within 30-40 days after the initial report (inclusive of inquiry)
- FTC Title IX Team Adjudicator(s) to review the investigative report and materials with 5 days of delivery
- Determination issued within 10 days after receipt of investigative report
- Notice of sanctions issued within 5 days after the determination
- Appeals due from either party within 5 business days following the date on the outcome letter
- Appeals decisions rendered within 10 business days after receipt of the formal request of appeal

## **G. RESOURCES AND RIGHTS**

### **RESOURCES FOR ANYONE WHO EXPERIENCES GENDER-BASED MISCONDUCT**

The College's primary concern is with the health, safety, and well being of the members of the Five Towns College community. If you or someone you know may have experienced any form of gender-based misconduct or possible violations under Title IX, we urge you to seek immediate assistance. Student assistance can be obtained 24 hours a day, 7 days a week from:

#### **ON-CAMPUS CONFIDENTIAL RESOURCES:**

Five Towns College Counseling Center: (631) 656-3191

#### **ALL FTC COMMUNITY MEMBERS:**

All members of the community can seek assistance through the following contacts:

- FTC Public Safety Office: (631) 656-2196
- Title IX Coordinator, Dana Gioe (631) 656-2189
- NYS Police 24 Hour Hotline # is: 1-844-845-7269

Additional information about gender-based and sexual misconduct can be found on the Five Towns College website, <http://www.ftc.edu/title-ix/>

#### **RELEVANT GOVERNMENT RESOURCES**

The below government agency may provide additional resources for anyone wishing to file a complaint of gender-based misconduct:

U.S. Department of Justice, Office on Violence Against Women, <http://www.ovw.usdoj.gov/>

Department of Education, Office for Civil Rights, New York—Region II via email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov) or online at <http://www.ed.gov/ocr>

## H. COMPLAINANT AND RESPONDENT RIGHTS

The following rights are available to both parties in this process:

- To be treated with respect, dignity, and sensitivity throughout the process.
- To seek support services at the College or referrals for support services off campus.
- To privacy and protection under the Family Education Rights and Privacy Act (FERPA), as applicable. The College will make all reasonable efforts to ensure preservation of privacy, restricting information to those with a legitimate need to know.
- To be informed of the College's Policies and Procedures related to Gender-Based Misconduct.
- To a prompt and thorough investigation of the allegations, investigated and adjudicated in an impartial, timely and thorough manner by trained individuals.
- To receive similar and timely access to information, and periodic updates on the progress of the process.
- To review all applicable documents prior to the review by the Adjudicator.
- To challenge the individuals responsible for administering these procedures, if a conflict of interest is present.
- To participate or decline to participate in the disciplinary procedure. However, the Adjudicator will determine an outcome with the information available to him/her.
- To discuss alternatives to procedures, where alternatives may be reasonable and acceptable to involved parties.
- To refrain from making self-incriminating statements. However, the Adjudicator will determine a resolution with the information available to him/her.
- To be afforded an appeal process regarding outcome and/or sanctioning (as applicable).
- To be notified, in writing, of the case resolution – including the outcome of any appeal.

- To report the incident to law enforcement if she/he wishes to do so, and receive assistance with this if requested.
- To understand that information collected in this process may be subpoenaed in criminal or civil proceedings.

These rights apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

## **I. N.Y.S. EDUCATION LAW ARTICLE 129-B: STUDENTS' BILL OF RIGHTS**

All students have the right to:

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