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## **HARASSMENT, NON-DISCRIMINATION AND SEXUAL MISCONDUCT POLICIES AND PROCEDURES**

Augustana University is committed to providing a workplace and educational environment that is free from all forms of harassment, discrimination, and sexual misconduct. The University expressly prohibits discrimination and harassment on the basis of race, color, national origin, ethnicity, sex, sexual orientation, gender, gender identity, gender expression, age, religion, and disability. Augustana University prohibits sexual harassment, sexual violence, intimate partner violence, sexual exploitation and stalking regardless of the gender, gender identity, gender expression, or sexual orientation of the individuals involved.

Augustana University adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. The University does not discriminate in its admissions practices, in its employment practices, or in its educational programs or activities.

Augustana University also prohibits retaliation against any person participating in good faith in any discrimination investigation or complaint process internal or external to the institution; for bringing a complaint of discrimination or harassment or for assisting someone with such a complaint.

Augustana University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. Augustana's policies and procedures related to harassment, discrimination and sexual misconduct are designed to promote principles of global human dignity with an emphasis on meaningful remedies, social justice, victim empowerment and advocacy, comprehensive investigation and prompt, humane, non-adversarial resolution of everything from bias incidents to stalking, to rape and intimate partner violence.

The policies presented here are subject to evaluation and investigation in compliance with Title IX Regulations and, where applicable, referral to other appropriate Augustana Policies based on the status of the Respondent. This Policy is applicable to faculty, staff and students.

### **I. OVERVIEW**

This policy applies to the employment and education program and activities of Augustana University, to conduct that takes place on the campus or on property owned or controlled by Augustana University, at Augustana-sponsored events, or in buildings owned or controlled by Augustana University's recognized student organizations. The Respondent must be a member of Augustana's community in order for its policies to apply.

Reports of discrimination, harassment, sexual misconduct or retaliation should be made promptly. There is no time limitation on the filing of grievances as long as the accused individual remains subject to Augustana's jurisdiction. All reports are acted upon promptly while every effort is made by Augustana to preserve the privacy of reports.

Regardless of where the conduct occurred, Augustana will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. Augustana will

address off-campus conduct when such conduct represents a substantial University interest or substantially impacts a member of the Augustana community.

A substantial Augustana interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by federal or state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality of Sioux Falls where Augustana is located;
- b. Any situation in which it is determined that the Respondent may present a danger or threat to the health or safety of self or others;
- c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests of Augustana.

Off-campus discriminatory or harassing speech by employees may be regulated by Augustana only when such speech is made in an employee's official or work-related capacity.

The Associate Dean of Students serves as Augustana's Title IX/Equity/Affirmative Action Coordinator (hereafter referred to as Title IX Coordinator) and oversees implementation of Augustana's policy on equal opportunity, harassment and nondiscrimination and sexual misconduct.

Inquiries about this policy and procedure may be made internally to:

Beth Elam  
Associate Dean of Students (Title IX Coordinator)  
Dean of Students Office  
Edith Mortenson Center #116 (605) 274-4124  
belam@augie.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR) U.S.  
Department of Education  
400 Maryland Avenue, SW Washington, DC  
20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>  
Web: <https://www.notalone.gov/>

## **II. POLICY STATEMENTS**

### **1. Policy on Nondiscrimination**

Augustana adheres to all federal and state civil rights laws banning discrimination in institutions of higher education.

This policy covers nondiscrimination in employment and in access to educational opportunities.

Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of Augustana policy on nondiscrimination. When brought to the attention of Augustana, any such discrimination will be appropriately remedied by Augustana according to the procedures below. This Policy is not intended to create a contract between Augustana University and any other person.

### **2. Policy on Accommodation of Disabilities**

Augustana is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, eating, sleeping, standing, lifting, bending, learning, reading, concentrating, thinking, communicating, working, sitting, reaching, walking, performing manual tasks, interacting with others, or caring for oneself.

The Director of Student Academic Support Services has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance.

- a. Students with Disabilities – Augustana is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of .

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Student Academic Support Services who coordinates services for students with disabilities. The director reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

- b. Employees with Disabilities – Pursuant to the ADA, Augustana will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Human Resources Office and provide appropriate documentation. The Human Resources Office will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

### **3. Policy on Discriminatory Harassment**

Students, faculty and staff are entitled to a working environment and educational environment free of discriminatory harassment. Augustana's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under this policy.

- a. **Discriminatory and Bias-Related Harassment** – This harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community. Harassment constitutes a form of discrimination. Augustana will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Augustana may also impose sanctions on the harasser.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.<sup>1</sup>

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under this policy, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, faculty and staff personnel should contact the Title IX Coordinator or a confidential resource (refer to Section 8a. Policy on Confidentiality – Confidential Reporting, page 8).

Augustana condemns and will not tolerate discriminatory harassment against any student, employee, visitor or guest on the basis of any status protected by Augustana policy or law.

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Augustana policy content appearing on Augustana's website supersedes all print documents and will serve as the essential resource for current practice.

Recent guidance from the U.S. Department of Education's Office for Civil Rights clarifies that sexual harassment includes all forms of sexual violence including sexual misconduct, exploitation, stalking and other related policies as defined in this publication.

<sup>1</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance. The document is available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

#### 4. Policy on Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of South Dakota regard Sexual Harassment, a specific form of discriminatory harassment, which consists not only of employer and employees, but of students as well.

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 offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

- 1) Quid Pro Quo:
  - a) an employee of Augustana University,
  - b) conditions the provision of an aid, benefit, or service of the recipient,
  - c) on an individual's participation in unwelcome sexual conduct; and/or
- 2) Sexual Harassment:
  - a) unwelcome conduct,
  - b) determined by a reasonable person,
  - c) to be so severe, and
  - d) pervasive, and,
  - e) objectively offensive,
  - f) that effectively denies a person equal access to Augustana's education and/or work environment
- 3) Sexual Assault, defined as:
  - a) Sex Offenses:
    - i) Any sexual act directed against another person,
    - ii) without the consent of the Complainant,
    - iii) including instances in which the Complainant is incapable of giving consent
  - b) Rape:
    - i) Penetration,
    - ii) no matter how slight,
    - iii) of the vagina or anus with any body part or object, or
    - iv) oral penetration by a sex organ of another person,
    - v) without the consent of the Complainant
  - c) Sodomy:
    - i) Oral or anal sexual intercourse with another person,
    - ii) forcibly,
    - iii) and/or against that person's will (non-consensually),
    - iv) 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.
  - d) Sexual Assault with an Object:
    - i) The use of an object or instrument to penetrate,
    - ii) however slightly,
    - iii) the genital or anal opening of the body of another person,
    - iv) forcibly,



- v) and/or against that person's will (non-consensually).
    - vi) 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.
  - e) Fondling:
    - i) The touching of the private body parts of another person (buttocks, groin, breasts),
    - ii) for the purpose of sexual gratification,
    - iii) forcibly,
    - iv) and/or against that person's will (non-consensually),
    - v) 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.
  - f) Incest:
    - (1) Non-forcible sexual intercourse,
    - (2) between persons who are related to each other,
    - (3) within the degrees wherein marriage is prohibited by South Dakota law.
  - g) Statutory Rape:
    - (1) Non-forcible sexual intercourse,
    - (2) with a person who is under the statutory age of consent of 16 years old (as defined in South Dakota state law).
- 4) 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: dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse and does not include acts covered under the definition of domestic violence.
- 5) 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 who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - e) by a person similarly situated to a spouse of the Complainant under the domestic or family violence law of South Dakota, or
  - f) 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 South Dakota.

- 6) 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.

For the purposes of this definition - 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. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**5. Other Civil Rights Offenses (when the act is based upon the status of a protected class)**

- a. Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:
- invasion of sexual privacy;
  - recording or attempting to record nude, partial nude or sexual media without the consent of the person or person depicted in the media;
  - streaming, sharing, or distributing nude, partial nude, or sexual media without the consent of the person depicted in the media;
  - non-consensual sexual voyeurism;
  - inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;
  - administering sexual assault facilitating drugs including, but not limited to, alcohol, sleeping pills, sedatives, tranquilizers, anesthetics, depressants, and psychotropics without a person's knowledge and permission;
  - going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity);
  - exposing one's genitals in non-consensual circumstance;
  - inducing another to expose their genitals;
  - prostituting another person;
  - knowingly transmitting or exposing another person to a sexually transmitted infection without the knowledge of the other person
- b. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class.

- c. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class.
- d. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class.
- e. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the campus community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under South Dakota State law and prohibited by Augustana policy.
- e. Bullying, cyber-bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.
- f. Any other rules, when a violation is motivated by the actual or perceived membership of the complainant on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand up through and including expulsion (students) or termination of employment.

## **6. Standards for Analysis of Reported Prohibited Conduct**

### **a. *Consent***

#### **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 the University 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.

In the State of South Dakota, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor consents to engage in the act.

#### ***b. 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.

#### ***c. Incapacitation***

A person cannot consent if they are unable to understand what is happening or are 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.

#### ***d. 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.

## **7. Policy on Consensual Sexual or Romantic Relationships Between Employees, Students, and Subordinates**

### **Policy Statement**

Augustana University is committed to maintaining a safe, positive, and respectful environment where students, faculty, administrators, and staff study, learn, and work without concern that potentially exploitative or coercive sexual or romantic relationships may damage the associations essential to our educational mission, create real or perceived conflicts of interest, or jeopardize the fair treatment of members of our community.

### **Reason for Policy**

The purpose of the Policy on Consensual Sexual or Romantic Relationships is to ensure that Augustana University's academic and work environment remains free from real or apparent conflicts of interest when individuals in positions of unequal power and authority at Augustana University are involved in consensual sexual or romantic relationships.

The relationships identified in this policy invariably involve individuals occupying positions of asymmetrical power and authority. That asymmetry has the potential to compromise the integrity of the academic or work environment and creates an inherent risk of exploitative or coercive sexual or romantic relationships. The existence of a relationship in this context, even where consensual, may also create the perception of favoritism or preferential treatment that damages the integrity of the supervision and evaluation provided and may harm third parties. These types of relationships may also raise concerns that the person in authority has violated standards of professional conduct, raise the potential for conflicts of interest or bias, and undermine the respectful and productive educational and supervisory affiliations between individuals, and may lead to actual or perceived sexual harassment, discrimination, and other behavior harmful to members of our community.

### **Consensual Sexual or Romantic Relationships and Evaluative Authority**

When individuals involved in a consensual sexual or romantic relationship are in positions of unequal power and authority at Augustana University, such as faculty-student, supervisor-subordinate employee, advisor-advisee, or coach-student athlete, there is the potential for a conflict of interest, favoritism, and exploitation. These relationships may be less voluntary than the person with greater power and authority perceives, or circumstances may change and conduct that was once welcome may become unwelcome. The fact that a relationship was initially consensual does not insulate the person with greater power and authority from a claim of sexual harassment. Further, a party's professional or academic reputation may suffer due to perceptions of favoritism or exploitation. Moreover, such relationships may lead to restricted opportunities, or a perception thereof, for others in the academic or work environment.

Therefore, this policy prohibits (with few exceptions as identified in this policy):

- Sexual or romantic relationships between undergraduate students at Augustana University and faculty, coaches, administrators, staff, and certain other individuals, as identified in this policy.
- Sexual or romantic relationships between graduate students at Augustana University and faculty, coaches, administrators, staff, and certain other individuals, as identified in this policy, who have or may have in the future an instructional, evaluative or supervisory responsibility over the graduate student while the graduate student is at Augustana University.
- Sexual or romantic relationships between supervisors and subordinate employees.

## **Definitions**

- For purposes of this policy, a “faculty member” is someone who teaches, educates, supervises, or evaluates students and includes but is not limited to regular, part time, adjunct, or visiting faculty. It includes faculty who may not be teaching during a particular semester or academic year but who serve as an academic administrator, as well as faculty who are on sabbatical or on some other form of leave. For purposes of this policy, “faculty member” does not include graduate or undergraduate students who are primarily students.
- For purposes of this policy, “staff and administrators” include Augustana University employees, administrators, athletic coaches, graduate assistants, contractors, volunteers, and others who coach, mentor, counsel, advise, employ, supervise, manage, or evaluate students for or on behalf of Augustana University. For purposes of this policy, staff and administrators does not include undergraduate or graduate student employees who are primarily students.
- For purposes of this policy, “romantic” means showing, expressing, or relating to sexual interest, intimacy or relations, irrespective of whether such conduct is welcome.
- For purposes of this policy, a “graduate or undergraduate student” is someone who is enrolled at Augustana University and primarily pursuing a graduate or undergraduate degree. Students with unclear registration status or a registration status other than as a graduate or undergraduate student, and graduate students who are members of a University athletics team based on NCAA eligibility rules, are considered undergraduates for purposes of this policy.

## **Prohibited Relationships With Undergraduate Students**

No faculty member, staff, administrator or graduate assistant may have a sexual or romantic relationship with any undergraduate student at Augustana University.

No faculty member, administrator, staff member, or graduate assistant may teach, instruct, evaluate, recommend (or serve as a reference for), supervise, or manage an undergraduate student with whom they have previously had a sexual or romantic relationship.

## **Prohibited Relationships With Graduate Students**

No faculty member, administrator, or staff member may have a sexual or romantic relationship with a graduate student or graduate assistant in the department or program they instruct and/or supervise. Further, no faculty member, administrator, or staff member may have a sexual or romantic relationship with a graduate student or graduate assistant over whom they have, or likely will have a future

instructional, evaluative, supervisory, or managerial relationship while the graduate student or graduate assistant is matriculating at Augustana University, including one who may be called upon to formally or informally provide a recommendation (or serve as a reference) for future employment or fellowship, research or other educational positions.

No faculty member, administrator, or staff member may teach, instruct, evaluate, recommend, supervise, or manage a graduate student or graduate assistant with whom they have or previously had a sexual or romantic relationship.

### **Prohibited Relationships Between Supervisors and Subordinate Employees**

Individuals in supervisory or managerial roles and those with authority over other employees' terms and conditions of employment are prohibited from having a sexual or romantic relationship with any subordinate employee that reports to them. Vice presidents, deans, directors, and others who manage multiple departments are prohibited from having a sexual or romantic relationship with an employee who works in their division, college, or department, even if that employee does not directly report to these individuals.

Employees are encouraged to review the Employment of Relatives Policy for rules regarding the supervision or evaluation of employees to whom a supervisor is related.

### **Pre-Existing Relationships**

To protect the integrity of the academic and work environment, Augustana University requires that when a consensual sexual or romantic relationship exists or has existed between people in positions of unequal authority at Augustana University, the person with the greater power and authority must not hold any supervisory or evaluative authority over the other person in the relationship.

Should a pre-existing sexual or romantic relationship exist that pre-dates one or both parties' affiliation with Augustana University and that otherwise would be prohibited under this policy, the person in the position of greater authority within Augustana University must immediately report the relationship to the Provost and Executive Vice President of Academic Affairs (in the case of a faculty member), or the Director of Human Resources (in the case of an administrator, or staff member). It is the responsibility of both the person with the greater power and authority in the relationship and the individual to whom the relationship is reported to ensure that the party with the greater power is removed from any supervisory or evaluative authority over the other party to the relationship. In extraordinary circumstances where removal of supervisory or evaluative authority is not practicable, the parties must work with the department chair, dean, and the Executive Vice President of Academic Affairs/Provost (in the case of a faculty member), or the Director of Human Resources (in the case of an administrator, or staff member) to determine whether a written management plan can be developed to manage the conflict of interest. Failure to comply with the notification, removal, or management plan requirement is a violation of this policy.

## **Consequences of Violations of this Policy**

If any faculty member, administrator, or staff member, or student of Augustana University violates the terms of this Policy, disciplinary action may be taken in accordance with relevant disciplinary procedures contained in the relevant handbooks, policies, procedures, practices, or contracts. Violations of this policy may result in disciplinary actions, which can include, but are not limited to training, counseling, a written warning, suspension (including suspension of relevant responsibilities such as teaching or advising), or termination of employment. The disciplinary and/or corrective action will depend on the particular circumstances of the violation, including but not limited to whether the person in the position of greater authority promptly reported the relationship prohibited under this policy.

Nothing in this policy prohibits a member of the Augustana University community from bringing a complaint under Augustana University's Title IX Policy, if, for example, the individual believes that the sexual or romantic relationship was not welcome or consensual. Further, in cases where there is a finding under the Sexual Harassment and Misconduct Policy that a relationship was welcome or consensual, an investigation and appropriate action may still be taken for violations of this policy.

## **8. Policy on Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Augustana prohibits any retaliation against any person making a report or against any person cooperating in the investigation of an incident including witnesses. Retaliation includes intimidation, threats, or harassment. Acts of alleged retaliation should be reported immediately and will be promptly investigated. Augustana is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

## **9. Policy on Confidentiality & Reporting of Offenses**

Augustana is committed to the highest ethical and professional standards of conduct and to the safety and well-being of all members of our community. To achieve this goal, Augustana expects and relies on each member of the community to report actual or suspected violations of federal or state laws, violations of Augustana policy or procedures, or other suspected wrongdoings. This includes reports from students, third-parties, and/or anonymous sources. The following describes the reporting options at Augustana.

- a. Confidential Reporting – If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with on-campus counselors, campus clinic providers, campus pastors, mental health & wellness specialist, off-campus local rape crisis counselors, domestic violence resources and local or state assistance agencies, who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors are available for students and the Employee Assistance Program is available for employees free of charge and can be seen on an emergency basis twenty-four hours a day/seven days a week. These employees will submit anonymous statistical information for Title IX tracking and Clery Act purposes.



- b. *Mandatory Reporting Options* – Augustana employees have a Duty to Report, unless they fall under the section above. Parties making a report may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases indicating pattern, predation, threat and/or violence, Augustana will be unable to honor a request for confidentiality. In cases where the complainant requests confidentiality and the circumstances allow Augustana to honor that request, Augustana will offer supportive measures to the complainant and the respondent but will not otherwise pursue formal action. A complainant has the right, and can expect, to have reports taken seriously by Augustana when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Title IX Coordinator, Deputy Coordinators, Hearing Panel members and Investigator. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as limited as possible to preserve a complainant's rights and privacy. Additionally, anonymous reports can be made by complainant and/or third parties using the online reporting form posted at [www.augie.edu/sexualmisconduct](http://www.augie.edu/sexualmisconduct). Note that these anonymous reports may prompt a need for Augustana to investigate.

## **10. Amnesty for Student Drug and Alcohol Violations**

Augustana encourages the reporting of misconduct and crimes by complainants and witnesses. Sometimes, students are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking or minor drug offenses at the time of the incident. It is in the best interests of the community that as many people as possible choose to report to University officials and that witnesses come forward to share what they know. To encourage reporting, Augustana University pursues a policy of offering Complainants, Respondents, and witnesses amnesty from being charged for alcohol and other drug violations under the Student Code of Conduct. The University will provide educational rather than punitive responses in such cases.

## **11. False Reports or Allegations**

Knowingly and deliberate false and/or malicious reports or allegations made under this Policy are prohibited and will be investigated and addressed accordingly. Individuals who are found to have made a knowingly and deliberate false and/or malicious report or allegation will be subject to appropriate disciplinary action up to and including termination from employment or expulsion from the University. Reports or allegations that are made in good faith but are found to be erroneous are not considered false reports or allegations.

## **12. Policy on Federal Requirement for Timely Warnings**

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

### III. GRIEVANCE PROCEDURES

#### ELEMENTS OF PROCEDURES & REMEDIES

Augustana will act on any notice or formal complaint of an allegation of a violation of the policy on Harassment, Non-Discrimination and Sexual Misconduct or, that is received by a Title IX Coordinator, Deputy/Deputies, Campus Safety or University Administration.

The procedures described below will apply to all grievances involving students, staff or faculty members. Redress and requests for responsive actions for grievances brought involving non-members of the Augustana community are also covered by these procedures.

All employees receiving reports of a potential violation of Augustana policy are expected to promptly contact the Title IX Coordinator after becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any grievances received by any party will be reported to the Title IX Coordinator, but, subject to Augustana's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of a grievance. In all cases, Augustana will give consideration to the party making an allegation of a violation with respect to how the resolution of the allegation is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when a complainant chooses not to initiate or participate in the formal complaint process.

#### A. Reporting an Allegation or Filing a Complaint

Any member of the community, guest or visitor who believes that the policy on Harassment Nondiscrimination and Sexual Misconduct has been violated should contact a Title IX Coordinator or Campus Safety. It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member with whom the complainant feels comfortable, or any member of the community may contact Campus Safety. These individuals will in turn notify the Title IX Coordinator. An online report form at [www.augie.edu/titleix](http://www.augie.edu/titleix) is also available to initiate a grievance.

Upon notice by a third party the Title IX Coordinator will engage in outreach to the identified Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Office of Human Resources will be consulted in circumstances when allegations are made against an employee. If the grievance does not appear to allege a violation of the Harassment, Non-Discrimination and Sexual Misconduct policy then the grievance does not proceed to investigation but is forwarded to the appropriate office for further review.

***Advisor of Choice:*** The complainant and respondent are permitted and encouraged to have an Advisor of Choice accompany them throughout the process. In cases involving sexual harassment, sexual assault, dating or domestic violence or stalking, by law, the advisor of choice may be anyone the party chooses to serve in this capacity. If an individual does not have an advisor the University will offer to provide one to them.

**Confidentiality:** The University will maintain confidentiality to the greatest degree possible consistent with the University's legal obligations to take all reasonable steps to protect the welfare of the campus community and to otherwise comply with applicable law.

## **B. Supportive Measures**

Upon notice of alleged harassment, discrimination, and/or retaliation, and during the pendency of an investigation or other proceedings under this policy, the University will offer and implement appropriate and reasonable supportive measures to the parties to ensure equal access to its education programs and activities, to protect the parties, and/ or to safeguard the University community.

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 the University's education program or activity, including measures designed to protect the safety of all parties or the University'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, the University will inform the Complainant, in writing, that they may file a formal complaint with the University 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. The Title IX Coordinator will offer appropriate supportive measures to the Respondent upon notice of allegations.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. University will act to ensure as minimal an academic or occupational impact on the parties as possible.

The University 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
- Student financial aid counseling
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings

- Class schedule modifications, withdrawals, or leaves of absence
- 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.

### **C. Emergency Removal**

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

This risk analysis is performed by the Title IX Coordinator in conjunction with the Assessment and Care Team. In all cases in which an emergency removal is imposed, the accused 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 in a timely manner, 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.

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

The Assessment and Care Team will conduct the risk analysis of the referred student and will make recommendations to the Title IX Coordinator for appropriate action. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

Augustana University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee'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 housing, 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, existing provisions for interim action are applicable.

#### **D. The Investigation Process**

Following a signed Formal Complaint by the Complainant, the Title IX Coordinator, or designee, will initiate the process under this policy by notifying the accused party (“respondent”) that a complaint has been filed against them and inform the respondent of the nature of the complaint.

The Title IX Coordinator, or Deputy Coordinator, shall explain to both parties the avenues for informal and formal action, including a description of the process and the relevant avenues of redress, and provide each with a copy of this policy.

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.

At any time during the investigation, the Title IX Coordinator, or designee, may recommend supportive measures be provided by University officials.

#### **E. Informal Resolution Process**

The University provides an informal resolution process, following a formal complaint, when the parties desire to resolve the situation cooperatively. Informal resolution may include inquiries into the facts but does not typically rise to the level of a formal investigation.

The informal process, which is overseen by the Title IX Coordinator, or designee, is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Where circumstances allow, the informal process will be initiated as soon as possible after the filing of the formal complaint, absent any unusual circumstances.

Informal resolution may include, but is not limited to, options such as meeting informally with the complainant and the respondent (individual or group representative) with the intent of bringing about resolution; separation of the parties; or other remedial measures. In cases where groups are involved, the Title IX Coordinator may require that one or two members of the group be authorized in writing to act on behalf of the group in the informal process; all members of the group would be bound by the terms of the informal process.

Situations that are resolved through the informal process are usually subject to follow-up after a period of time. Steps taken by the Title IX Coordinator or designee to help the parties achieve informal resolution will be documented. Some reports of alleged violations of this policy may not be appropriate for informal resolution but may require a formal investigation at the discretion of the Title IX Coordinator, in consultation with other appropriate offices. Both the complainant and the respondent have the right to bypass or end the informal complaint process at any time in order to begin the formal complaint process.

### **III. GRIEVANCE RESOLUTION PROCESSES**

In order to comply with Title IX Regulatory Standards (34 CFR §106.30) Augustana University has established a Two-prong Grievance Resolution Process. Process “A” is created to comply with the Title IX Regulatory standards and Process “B” applies to all other forms of harassment and discrimination and sexual misconduct violations that are not applicable under the Title IX Regulatory standards as set forth in §106.30, including forms of sexual misconduct that do not fall under the regulatory standards. Allegations of violations of these policy elements follow Process “B”, the University’s established Grievance Resolution Standards.

#### **PROCESS “A”**

##### **I. TITLE IX REGULATORY GRIEVANCE STANDARDS (106.45)**

Under 34 CFR §106.45 (B)(3) the University must apply the following standards in order to comply with the Title IX Regulatory Grievance Protocol. Allegations of sexual harassment that meet the five elements identified under Process “A” will be addressed under the Grievance Resolution Part A, “Title IX Regulatory Grievance Standards”, if any of the five categories are not met the process will revert to the Augustana University Grievance Process (Process “B”)

##### ***Initial Assessment and Mandatory Dismissal:***

The Title IX Coordinator will conduct an Initial Assessment following a report or the filing of a formal complaint.

If any of the following elements are not present, the University will dismiss the formal complaints under the Regulatory Grievance Process (Process “A”) and refer the case to the appropriate office to address. Cases involving student respondents will be referred to the Dean of Students Office. Cases involving faculty or staff respondents will be referred to the Office of Human Resources and/or the Office of the Provost (Collectively called Process “B”):

1. The conduct must meet sexual harassment as defined above (34 CFR §106.30)
2. The Complainant must be a member or seeking to become a member of the University community
3. The University must have control over the harasser (i.e., must be a current student or employee)
4. The conduct must occur in a program or activity of the University, or at an off-campus residence that is owned or controlled by a registered student organization
5. The incident must occur in the United States

##### ***Title IX Regulatory Definition of Sexual Harassment***

Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
  2. Unwelcome conduct by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity;
- or

3. “Sexual assault” as defined in 20 U.S.C.1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

### ***Permissive Dismissal***

The University 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 the University; or
3. Circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Dismissal of a formal complaint as defined by Title IX Regulations, CFR part 106.30, does not preclude further proceedings related to potential violations of any other University Policy

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

Informal resolution may not be used to resolve cases involving allegations of an employee harassing students.

In formal complaints of sexual harassment (as defined by Title IX Regulations, CFR part 106.30) the following general principles and procedures will govern this process, to the extent consistent with the University’s legal obligations.

## **II. TITLE IX REGULATORY GRIEVANCE PROCESS**

If the allegation of a violation of this policy has not been resolved as a result of the informal process or is not suited for informal efforts, or if either the complainant or the respondent requests to invoke the formal complaint process, the following process will be initiated. (The lodging and processing of a formal complaint does not preclude, however, the possibility of an informal resolution of the matter, if desired by the parties.)

### ***Formal Grievance Resolution Process***

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 allegations,
- 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 the University 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 the University'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 the University'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 the University'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,
- An instruction to preserve any evidence that is directly related to the allegations.

Notice 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 University records or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **III. TITLE IX REGULATORY INVESTIGATION PROCESS**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all 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.

- Following collection of all evidence the Investigator will provide a copy of the preliminary report to the Title IX Coordinator for review.

- Following review and input from the Title IX Coordinator the Coordinator will provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy 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 the University 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 days.
- 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 shares the report with the Title IX Coordinator for feedback.
- The Investigator will incorporate any relevant feedback from the Title IX Coordinator, 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.
- The complainant and respondent will be provided the final report and any relevant evidence collected as part of the investigation at least ten (10) business days prior to a hearing.
- Following its completion, the Title IX Coordinator, or designee, will provide the full investigative report to the Decision Maker or Panel.
- After the completion of the hearing, which includes objective evaluation of relevant evidence and cross examination of parties conducted by an Advisor of choice, the decision-maker or panel will prepare a notice of outcome or written decision, including but not limited to, any necessary sanctions, using the preponderance of evidence standard and stating the rationale for its decision. In employee cases, the Decision-maker or panel will refer their final decision to the Dean of Student Office or the Office of Human Resources or the Office of the Provost for appropriate sanctions.
- Both parties are entitled to appeal the decision subject to the standards established by Augustana University. (*See Part III Protocols to Accompany All Grievance Processes*)

#### **IV. PROTOCOL FOR TITLE IX HEARING PROCESSES (106.45):**

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 the University will appoint one. Each party must have an Advisor present. There are no exceptions.

##### **A. Guidelines for Hearing Procedures**

- The parties may not introduce individuals or information at the hearing that was not previously introduced to or interviewed by the Investigator and assessed for relevance to be included in the Investigation Report and accompanying materials.

- At the hearing the Decision maker or Panel has the authority to hear and make determinations on all allegations of harassment, discrimination, sexual misconduct and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with these allegations, even though those collateral allegations may not specifically fall within the Policy.
- Participants at the hearing will be limited to the Chair, any additional panel members, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, 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 or Panel and the parties' advisor and then will then be excused.

## **B. Notice of The Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within one business day of receiving the Outcome letter from the Decision Maker or Panel deliberation statement.

- The Notice of Outcome will 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 University records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University 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 the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment programs or activities, to the extent the University 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 the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## **Appeals**

Both the complainant and the respondent have the right to appeal. An appeal must be submitted in writing to the Title IX Coordinator within 5 calendar days after receiving notification of the outcome of the hearing.

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 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.

Failure to appeal within the allotted time will render the original decision final and conclusive.

The appeal will be reviewed by a trained administrator appointed by the Title IX Coordinator.

Appeals will be decided upon the record of the original proceeding and upon written materials submitted by the parties.

### **The appeal officer reviewing an appeal may:**

- Affirm the finding and the sanction imposed by the original board.
- Affirm the finding and modify, but not eliminate, the sanction if it is found to be disproportionate to the offense.
- Assign the case to a new hearing board to resolve procedural errors, or errors in interpretation of University regulations were so substantial as to effectively deny the participant a fair hearing, or if new and significant evidence became available which could not have been discovered by proper diligence before or during the original hearing. The board will be directed not to repeat the specified errors that caused the case to be reheard.

Deference shall be given to the determinations of the hearing board.

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 the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University 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' University-issued email or otherwise approved account. Once mailed, emailed

and/or received in-person, notice will be presumptively delivered.

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.

## **PROCESS “B”**

### **AUGUSTANA UNIVERSITY DISCRIMINATION AND HARASSMENT GRIEVANCE PROCESS**

Except in complaints of sexual harassment as defined by the 2020 Title IX Regulations, 34 CFR Part 106.45 and described under Process “A” of this policy that meet the Title IX Regulatory standards, Augustana will apply an alternative approach to all sex/gender misconduct and discrimination cases that do not meet the Title IX Regulation definition of Sexual Harassment as well as all other forms of harassment and discrimination based on protected class. This alternative process, following the initial assessment of the allegations and dismissal under Title IX Regulations will be referred to as **Process “B”**.

Process B will follow the following procedures for resolution:

***Intake and Investigation:*** the following general principles and procedures will govern this process consistent with the University’s legal obligations for all allegations of discrimination or harassment, including sexual harassment and sexual misconduct that are exempted from the Title IX Regulatory Standards:

- Following an initial assessment of an allegation of harassment or discrimination that does not meet the Title IX Regulatory requirements, the Title IX Coordinator, or designee, will “dismiss” the case under the required Title IX grievance standards and refer the case to be resolved under Process B as established by Augustana University.
- Whether the case is resolved under Process A or Process B both parties will be provided with appropriate supportive measures as described in this document. Failure to comply with the terms of interim protections or supportive measures may be considered a separate violation of this policy.
- The Title IX Coordinator will engage in outreach to the respondent to provide the respondent with a description of the primary facts of the allegation and will schedule a meeting to discuss the grievance process.
- Either party or the Title IX Coordinator may suggest or request an informal resolution of the case. An informal resolution will require the agreement of both parties as well as the Title IX Coordinator. Either party may request termination of the informal process at any time prior to final informal resolution, in which case the case will move forward to investigation.
- If the parties do not request an informal resolution, the Title IX Coordinator will refer the case to the University Investigator to conduct the investigation.
- The investigation of formal complaints under Process B generally includes interviews of (a) the complainant, (b) the respondent, and/or (c) any witnesses as needed; and (d) the review of relevant documents and evidence as appropriate.

- Both the complainant and respondent will be given an equal opportunity to be heard, to provide a statement, documentation, and other evidence, and to suggest the names of other persons who they believe might have relevant information. The complainant and respondent will be provided access (equally) to relevant information and documents once the investigative file is complete.
- The investigation shall be completed as promptly as possible from receipt of the original complaint. Some investigations may take longer to complete depending on the nature and extent of the allegations or other extenuating circumstances.
- After concluding the investigation, the investigator will record the facts gathered during the investigation in a written report. The complainant and respondent will be informed that the investigation has been completed and will be given the opportunity to review the statements and any relevant evidence collected as part of the investigation.
- Following completion of the review of the investigation report, in cases involving a student respondent, the Title IX Coordinator, or designee, will provide the full investigative report to the Dean of Students for grievance resolution consistent with the Student Code of Conduct.
- In cases involving a staff respondent, the written report, including a recommendation of finding, using the preponderance of evidence standard, and the Title IX Coordinator's recommendations shall be submitted to the Office of Human Resources. Final decisions in cases where a staff employee is the respondent shall be made by the Office of Human Resources.
- In cases where a faculty member or other instructional employee is the respondent, recommendations of findings will be made to the Provost for the final decision.
- Sanctions and corrective actions will be determined and implemented on a case-by-case basis for violations of this policy, and they will be appropriate to the circumstances and gravity of the violation and may range from personal coaching/counseling to an official warning, suspension, termination, or expulsion.
- A decision made by the Dean of Students Office, the Office of Human Resources or the Office of the Provost shall be final.

### **III SANCTIONS**

Whether the final outcome is determined through Process A or Process B. The determination of a finding of violation will be based upon a preponderance of the evidence. Following a finding of violation, the following factors will be 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 or Panel

The sanctions will be implemented as soon as is feasible, 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.

*Student Sanctions.* The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any Augustana policy, procedure or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Augustana policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, no-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at Augustana.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend Augustana-sponsored events.
- **Withholding Diploma:** Augustana may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a grievance pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** Augustana reserves the right to revoke a degree awarded from Augustana for fraud, misrepresentation or other violation of Augustana policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, de-recognition, loss of privileges for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, Augustana may assign any other sanctions as deemed appropriate.

*Employee Sanctions* – Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

*Failure to Complete Sanctions/Comply with Responsive Actions* – All Respondents are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title

IX Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from Augustana and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **Recording**

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

### **Records**

In implementing this policy, records of all grievances, resolutions, and hearings will be kept by Augustana for a period of 7 years.

### **Statement of the Rights of Both Parties Involved in a Grievance**

- To be treated with respect by Augustana officials.
- To take advantage of campus support resources (such as counseling services, campus ministry, and Augustana's health service, or EAP services for employees).
- To experience a safe living, educational and work environment.
- To have an advocate during this process.
- To refuse to have an allegation resolved through informal resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have grievances heard in substantial accordance with these procedures.
- To full participation of the injured party in any process whether the injured party is serving as the party bringing a grievance or Augustana is serving as party bringing a grievance.
- To be informed in writing of the outcome/resolution of the grievance, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- No contact directives provided at the request of either party.



## V. REVISIONS

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator and Deputy Coordinators. The Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.<sup>2</sup>

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<sup>2</sup> Date of last review: April 5, 2022