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Resolution Procedure for Allegations of Harassment and Other Forms of Discrimination (excluding formal Title IX complaints) (Equity Resolution Process)

Gateway Technical College will act on any formal or informal allegation or notice of violation of policy H-110, Equal Opportunity, Civil Rights, and Sexual Harassment, that is received by the Office for Equal Opportunity and Civil Rights or a member of the administration, faculty, or other employee required to make a report under policy H-110.

The procedures described below apply to allegations of harassment or discrimination on the basis of protected class and retaliation involving students, staff or faculty members. Title IX sexual harassment allegations that fall under 34 CFR 106 (Nondiscrimination on the basis of sex in education programs and activities receiving federal financial assistance), as well as cases that include such allegations in addition to any other protected class discrimination arising from the same set of facts (known as mixed motive cases), are all resolved using the grievance process that complies with 34 CFR 106.45 as described in policy H-130: Title IX Grievance Procedure. This means that allegations that are defined as sexual harassment but are dismissed under Title IX may be processed under this policy.

When the Respondent (the person who is alleged to have violated this policy) is a member of the College community, such as a student or employee, the Equity Resolution Policy (ERP) is applicable regardless of the status of the Complainant (the person(s) making the allegations) who may be a member or non-member of the campus community, such as a student, student organization, employee, guest, visitor, etc. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing, discriminatory or retaliatory conduct (e.g.: vandalism, physical abuse of another, etc.).

1. Overview

Upon notice to the Director of Compliance, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate a private investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether policy H-110 has been violated. If so, the College will promptly implement effective remedies designed to end the conduct at issue, prevent its recurrence and address its effects.

2. Equity Resolution Process (ERP)

Allegations under the policy on nondiscrimination are resolved using the ERP. Civil rights investigators are trained to investigate violations of civil rights, at the direction of the Director of Compliance:

- a. To provide sensitive intake for and initial advice pertaining to the allegations,
- b. To investigate allegations, and
- c. To act as process advisors to those involved in the Equity Resolution Process.

Investigators receive training at least annually, organized by the Director of Compliance, which includes, but is not limited to:

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- The scope of Gateway's policy on Equal Opportunity, Civil Rights, and Sexual Harassment
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit/unconscious bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and resolution process including hearings (as appropriate), appeals, and informal resolution processes (applies to the Director of Compliance only)
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

3. Preliminary Inquiry/Intake

Following receipt of notice or an alleged violation of the College's policy on Equal Opportunity, Civil Rights, and Sexual Harassment, the Director of Compliance engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy could have been violated. Reasonable cause means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that the policy was violated. In addition, all parties are emailed a copy of their rights, information about the equity resolution process, and available support services offered on and off campus. This inquiry may also serve to help the Director of Compliance to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the Complainant has asked for no action to be taken. In any situation where violence, threat, pattern, predation, and/or weapon is not evidenced, the Director of Compliance may respect a Complainant's request for no action, and will investigate only so far as necessary to determine appropriate remedies. If the Director of Compliance determines that civil rights law is not applicable to allegations of discrimination or retaliation, but the College still intends to apply these policies and procedures to resolve the allegations, the Director of Compliance will document that it has been determined that civil rights law is inapplicable and that College policies and procedures will nevertheless be applied.

4. Resolution Options

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When the Complainant wishes to proceed or the College determines it will proceed, and the preliminary inquiry shows that reasonable cause exists, the Director of Compliance will direct that the allegation be resolved through one of the following processes, discussed briefly here and in greater detail below:

- **Informal Resolution** – used for less serious offenses and only when both parties agree to informal resolution. If informal resolution is desired by the Complainant, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.
- **Administrative Resolution (investigation)** – resolution by a trained administrator. The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Director of Compliance.

Once a formal investigation is commenced, the Director of Compliance will provide written notification of the investigation to the Respondent at the onset of a formal investigation. The College aims to complete all formal investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Director of Compliance with written notice to the parties of the delay, the reason for the delay, and the anticipated timeframe for completion.

If, during the preliminary inquiry or at any point during the formal investigation, the Director of Compliance determines that there is no reasonable cause to believe that policy H-110 has been violated, the process will end unless the Complainant requests that the EEO Officer makes an extraordinary determination to re-open the investigation. Such a determination may be appropriate where the Complainant identifies new evidence or information not previously available. This decision lies in the sole discretion of the Equal Opportunity Officer.

Discretion to Terminate the Process at Any Time

The process followed considers the preferences of the parties, but is ultimately determined by the Director of Compliance. If, during the preliminary inquiry or at any point during the formal investigation, the Director of Compliance determines that reasonable cause does not support the conclusion that policy has been violated, the process will end and the parties will be notified.

Either party may request that the Director of Compliance review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Director of Compliance, but the request is usually only granted in extraordinary circumstances.

Cross-claims

The College permits the filing of cross-claims but uses the preliminary inquiry, described above, to assess whether the allegations are made in good faith. Cross-claims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. The College is obligated to ensure that the resolution process is not abused for retaliatory purposes.

Cross-claims determined to have been reported in good faith will be processed using the resolution procedures below. Investigation of such claims may take place after resolution of the underlying allegation, in which case a delay may occur. Cross-claims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Director of Compliance. When cross-claims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this policy.

5. Supportive measures

Gateway's Office for Equal Opportunity and Civil Rights offer and implement appropriate and reasonable responsive, supportive, and/or protective measures to Complainants upon notice of alleged harassment, discrimination, and/or retaliation regardless of whether a resolution option is initiated.

These supportive measures are intended to support both the Complainant; protect and preserve access to educational and employment programs and activity; address the short-term effects of harassment, discrimination, and/or retaliation; protect the safety of all parties; and prevent further violations.

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or institutional community subgroup
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support
- Offering adjustments to academic deadlines, course schedules, etc.

At the time that measures are offered, the College will inform the Complainant, in writing, that they may file a formal report with the College either at that time or in the future.

The College will maintain as confidential the supportive or protective measures, provided that confidentiality does not impair the College's ability to provide the supportive or protective measures. Reasonable measures taken will be at no cost to the parties.

The College will use the least restrictive means possible when determining appropriate interim actions to ensure the continued safety and health of the reporting and responding parties and/or the College's community and to ensure as minimal an academic/occupational impact on the reporting and responding parties. The College will supportive measures that do not unreasonably burden the Respondent and will regularly re-evaluate the actions to determine the necessity of their continued implementation.

6. Emergency Removal

Gateway can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Director of Compliance in conjunction with a person trained to conduct such an analysis using its standard objective violence risk assessment procedures. In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Director of Compliance 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

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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. A Complainant and their Advisor may be permitted to participate in this meeting if the Director of Compliance determines it is equitable to do so. There is no appeal process for emergency removal decisions. A Respondent may be accompanied by an Advisor of their choice when meeting with the Director of Compliance for the show cause meeting. 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 Director of Compliance has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion. Gateway will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Director of Compliance, these actions could include, but are not limited to: removing a student from a residence hall, 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 organizational leadership, or intercollegiate/intramural athletics. At the discretion of the Director of Compliance, 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.

7. Investigation

Once the decision is made to commence a formal investigation, the Director of Compliance appoints at least one investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed.

Investigations are completed expeditiously though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete or as soon as the College believes this to be the case. College action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary. The investigators and/or Director of Compliance will provide regular updates to the reporting and Respondent throughout the investigation, as appropriate.

The investigators will typically take the following steps, if not already completed (not necessarily in order). The nature and type of investigation will ultimately determine the steps and order of these steps.

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- In coordination with campus partners (e.g.: the Campus or Academic Dean), initiate or assist with any necessary interim remedial actions;
- Determine the identity and contact information of the Complainant;
- Identify all policies allegedly violated;
- In cases where there is reasonable cause to believe other college policies were violated the complaint will be referred to the appropriate office unless investigated as a collateral allegation as described in the Administrative Resolution section, below;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the Respondent, who will be given notice prior to interview;
- The Director of Compliance (or designee) will prepare the notice of allegation on the basis of the preliminary inquiry that includes the rights of all parties, on and off campus support services, information about the equity resolution process;
- Meet with the Complainant to finalize their statement, if necessary;
- Provide written notification to the parties prior to their interviews that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee;
- Provide Complainant and Respondent with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Make a finding, based on a preponderance of the evidence (which means whether a policy violation is more likely than not to have occurred);
- Once the report is complete, the report is shared with the parties for their review and comment. Both parties have ten days to review the report and all material evidence collected during the investigation and which was used to make a determination. The investigator(s) may conduct additional investigation based on the feedback and incorporate feedback from the parties as appropriate;
- The Director of Compliance will make recommendations for sanctions if the policy was violated;
- The EEO Officer will review and approve the report, findings, and sanctions, if applicable;
- The investigator will finalize and present the findings to the parties in writing.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and the Equity Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone or Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the

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appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Process proceedings.

8. Advisors

Each party may choose an Advisor who is eligible and available to accompany them throughout the process. "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Director of Compliance if they change Advisors at any time.

Upon written request of a party, Gateway will copy the Advisor on all communications between Gateway and the party.

For parties who are entitled to union representation, Gateway will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

At the discretion of the Director of Compliance, more than one Advisor may be permitted to the parties, upon request. For equity purposes, if one party is allowed another Advisor, the other party must be allowed one to as well.

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

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

Parties whose Advisors are disruptive or who do not abide by Recipient policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting Gateway meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

Assistance in acquiring an advisor

Gateway will provide a trained advisor upon request. These advisors are employees of the college who have been trained in the resolution process.

9. Resolution

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with College policy. While the contents of the meetings are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

a. Informal Resolution

Informal Resolution is often used for less serious, yet inappropriate, behaviors and certain types of allegations of discrimination, and is encouraged as an alternative to the formal resolution process to resolve matters. The Director of Compliance will determine if informal resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the alleged conduct to informal resolution. In an informal resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of an informal resolution process, though the parties may agree to appropriate remedies. The Director of Compliance will keep records of any resolution that is reached, and failure to abide by the agreement can result in appropriate responsive actions.

Informal resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Director of Compliance believe that it could be beneficial. It is not necessary to pursue informal resolution first in order to pursue Administrative Resolution, and any party participating in informal resolution can stop that process at any time and request a shift to Administrative Resolution.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Administrative Resolution Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the misconduct or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

b. Respondent Admits Responsibility for Alleged Violations

The Respondent may admit responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent admits responsibility for all alleged misconduct, the matter is referred to the Director of Compliance who renders the determination that the Respondent is in violation of College policy and determines appropriate sanctions and/or responsive actions.

The appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Director of Compliance or designee has determined appropriate sanction(s) or responsive actions,

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which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Director of Compliance has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome.

c. Negotiated Resolution

The Director of Compliance, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College.

d. Administrative Resolution

Administrative Resolution, also referred to as an investigation, can be pursued for any behavior that falls within the policy on Equal Opportunity, Civil Rights, and Sexual Harassment, at any time during the process. In addition, the College has the authority to address all collateral misconduct (i.e., any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation) during the Administrative Resolution even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Civil Rights, and Sexual Harassment. Accordingly, investigations should be conducted with as wide a scope as necessary.

Administrative Resolution relies on the evidence, information and recommended findings within the investigation report to render a determination. Upon completion of the investigation, the investigator will provide the Director of Compliance (or VP of Diversity, Equity, and Inclusion where the Director of Compliance conducts the investigation) with a written report summarizing the evidence gathered and examined, including an assessment of credibility of the parties and witnesses, an analysis of the information and a recommended finding and sanction (if applicable). The Director of Compliance will request that the investigator(s) conduct any additional necessary inquiry, and will then finalize a determination in accordance with the procedures below. The EEO Officer will consider, but is not bound by, recommendations of the investigation.

The Director of Compliance may consider all evidence that he or she believes is relevant and credible, including history and pattern evidence in making a recommended determination to the Equal Opportunity Officer. The Director of Compliance may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Director of Compliance determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the Complainant (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the Complainant. While previous conduct violations by the Respondent are not generally admissible as information about the present allegation, the investigators will supply the Director of Compliance with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

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Neither the Director of Compliance nor the investigators will meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties when considering sanctions.

The Director of Compliance will base the determination(s) on the preponderance of the evidence (whether it is more likely than not that the Respondent violated policy as alleged).

The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point during the Administrative Resolution process. If the Respondent admits responsibility, the Director of Compliance may render a determination that the individual is in violation of College policy.

If the Respondent admits the violation, or is found in violation by a preponderance of the evidence, the Director of Compliance, in consultation with the Equal Opportunity Officer, and others as appropriate, will determine an appropriate sanction or responsive action, will implement it, and will act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct.

The Director of Compliance will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications. 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 College records; or emailed to the parties' College issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and any appeals options that are available.

Any individual materially involved in the administration of the resolution process (including the Director of Compliance, investigator, or decision-maker(s)) may neither have nor demonstrate a conflict of interest or bias for either reporting or responding parties generally, or for a specific reporting or Respondent.

The Director of Compliance will vet the assigned investigators to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Director of Compliance will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

The resolution process involves an objective evaluation of all relevant evidence obtained, both that which supports that the Respondent engaged in a policy violation and that which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based, in any way, on an individual's status as a Complainant, Respondent, or witness.

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Until the Respondent is determined to be responsible by a preponderance of the evidence for a policy violation, the Institution operates with the presumption that the Respondent is not responsible for the reported misconduct.

Investigation Timeline

Investigations are completed expeditiously, normally within sixty (60) calendar days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. Time to final resolution may take longer due to any delays and the timeframe for the parties to consider the draft report.

Compelling Formal Proceedings

The Director of Compliance reserves the right to initiate formal resolution proceedings without a report or participation by the Complainant when deemed necessary by the Director of Compliance, usually to protect the community in situations that evidence a compelling safety risk. When Gateway has actual knowledge of reports by multiple individuals regarding misconduct by the same Respondent, the Director of Compliance may initiate formal proceedings pursuant to this section, regardless of the participation level of one or more of the reporting parties.

When the College proceeds, the Complainant (or their advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this process irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the advisor is appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant. When the Director of Compliance believes it is necessary to move the process forward but also knows that credibility will be a key consideration in the formal process, the Director of Compliance must balance the institutional need to move forward without the involvement of the Complainant against the rights of the Respondent, who is entitled to a fair process in accordance with these procedures.

Delays in the Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include, but are not limited to, concurrent law enforcement activity, the need for language assistance, the absence of parties and/or witnesses, and/or accommodation for disabilities or health conditions. The Director of Compliance will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary and will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Institution will implement interim actions as deemed appropriate.

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

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c. Sanctions

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

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the Complainant and the community
- Any other information deemed relevant by the Director of Compliance

These factors can modify the typical sanction range.

The following are the usual sanctions that may be imposed upon students or student organizations singly or in combination.

- **Warning:** verbal or written notice to a student that serves to remind the student of the policy and prohibited behaviors, and that continued behavior may result in more significant sanctions.
- **Restriction:** a limitation on the student's access to identified services, locations, education, community activities or persons. Issued for a specified time frame.
- **Restitution:** Issued to a student who has committed a violation of this policy that resulted in staff, institutional or another student's financial loss. May be issued as a condition of return or continued attendance in the college.
- **Referral:** Issued to a student who has committed a violation of this policy and it is determined that continued participation at the college is contingent upon the student attending designated services (college or private vendor) or programs. May be issued for a specified time frame or as permanent and may be issued as a condition of return to or continued attendance at the College.
- **Loss of Privileges:** Issued to a student who has committed a violation of this policy and it is determined that the student may continue attendance at the College with permanent or temporary limitations on the student's access to identified services, locations, or educational community activities.
- **No Contact:** Issued to a student who has committed a violation of this policy and it is determined that the student may continue attendance at the College with permanent or temporary limitations on the student's access to or contact with an identified individual or group(s) of student and/or staff.
- **Disciplinary Probation:** Issued to a student who has committed a violation of this policy and will face additional sanctions if any additional violations occur during a specified time frame.

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- Emergency removal: Issued to a student, for a specified time frame, who has committed a major, egregious or continued violation(s) of this policy.
- Expulsion/Dismissal: Permanent removal, issued to a student who has committed a major, egregious or continued violation(s) of this policy.
- Other Actions: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Sanctions range from a verbal warning to expulsion from the college, based on the offense and the factors noted above in addition to any mitigating, aggravating, and/or compounding factors.

Responsive actions for an employee who has engaged in discrimination, harassment, and/or retaliation include

- Warning: verbal or written notice to an employee that serves to remind the employee of the policy and prohibited behaviors, and that continued behavior may result in more significant sanctions,
- Restriction: a limitation on the employee's access to identified services, locations, or persons. Issued for a specified time frame.
- Restitution: Issued to an employee who has committed a violation of this policy that resulted in staff, institutional or student's financial loss. May be issued as a condition of return or continued employment in the College.
- Referral: Issued to an employee who has committed a violation of this policy and it is determined that continued employment at the College is contingent upon the employee attending designated services or programs. May be issued for a specified time frame or as permanent and may be issued as a condition of return or continued employment at the College.
- Loss of Privileges: Issued to an employee who has committed a violation of this policy and it is determined that the employee may continue employment at the College with permanent or temporary limitations on the employee's access to identified services, locations, or College activities.
- No Contact: Issued to an employee who has committed a violation of this policy and it is determined that the employee may continue employment at the college with permanent or temporary limitations on the employees access to or contact with an identified individual(s) or groups of student and/or staff.
- Disciplinary Probation: Issued to an employee who has committed a violation of this policy and will face additional sanctions if any additional violations occur during a specified time frame.
- Emergency removal: Issued to an employee, for a specified time frame, who has committed a major, egregious or continued violation(s) of this policy. Emergency removal may be unpaid depending on applicable College policy.
- Termination of employment: Permanent termination of employment for an employee who has committed a major, egregious or continued violation(s) of this policy.
- Other Actions: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

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Sanctions range from a verbal warning to expulsion from the college, based on the offense and the factors noted above in addition to any mitigating, aggravating, and/or compounding factors. The college retains the rights to issues sanctions outside the identified range depending on the individual circumstances.

Restrictions, loss of privileges, no contact orders, disciplinary probation, emergency removal, and expulsion generally range from one day to five years. Students and employees must satisfy any and all requirements imposed at the time of the sanction to remove the sanction(s).

10. Withdrawal or Resignation While an Investigation is Pending

Students: The College does not permit a student to temporarily withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Civil Rights, and Sexual Harassment. Should a student decide to leave and/or not participate in the ERP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to College unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Office for Equal Opportunity and Civil Rights and Human Resources will reflect that status. Employees who resign during the Equity Resolution Process may be deemed ineligible for rehire.

11. Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Director of Compliance within 5 working days of the delivery of the Notice of Outcome. A single Appeal Decision-maker will review the appeal request. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The Request for Appeal will be forwarded by the Director of Compliance to the Appeal Decision-marker for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

An investigator not involved in the current case will make appeal decisions will review and make a decision on the final outcome of the grievance process.

This initial review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) 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

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- (C) The Director of Compliance or Investigator(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
- (D) The sanctions imposed are not proportionate to the violation(s) and the cumulative record of the Respondent.

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

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Director of Compliance, and, when appropriate, the Investigators.

The other party(ies) and their Advisors, the Director of Compliance, and, when appropriate, the Investigators will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and Appeal Decision-maker will render a decision within 5 business days, barring exigent circumstances. ¶

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 Gateway is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Gateway 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' Gateway-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

a. Sanctions Status During the Appeal

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for

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doing so must be permitted within 48 hours of implementation. Gateway may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

When the Appeal Decision-Maker finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Decision-Maker is to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgment for that of the original Investigator(s) or Director of Compliance merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Decision-Maker.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Director of Compliance stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within five business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural [or substantive] error cannot be cured by the original Investigator(s) and/or Director of Compliance (as in cases of bias), the Appeal Decision-Maker may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to the Gateway or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term

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Principles governing appeals involving a student emergency removal or expulsion will include the following:

- Where the Administrative Resolution Process has resulted in a finding that a student Respondent violated policy H-110 and the recommended sanction includes emergency removal or expulsion, prior to the implementation of the emergency removal or expulsion, the student may file an appeal. Under such circumstances, the matter will proceed to a hearing on the issue of whether a preponderance of the evidence demonstrates that the Respondent violated Policy H-110, and if so, what sanctions shall be implemented.
- At least fourteen (14) calendar days prior to the hearing, or as far in advance as is reasonably possible if an accelerated resolution process is scheduled with the consent of the parties, the Appeals Officer (or designee) will send a letter by at least one of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College issued email account. The letter will include the following: (1) an indication that the parties may have the assistance of an Advisor of their choosing, at the hearing, though the Advisor's attendance at the hearing is the responsibility of the respective parties; (2) the time, date and location of the hearing; and (3) a copy of the investigation determination. For good cause, the Appeals Officer may grant requests to reschedule the hearing date.
- At least seven (7) calendar days prior to the hearing, the parties provide the Appeals Officer a list of the names of the proposed witnesses and copies of all proposed documentary evidence. At least five (5) business days prior to the hearing, the Appeals Officer (or designee) will have the names of proposed witnesses and copies of all applicable documentary evidence available for the parties.
- The Appeals Officer in consultation with the parties, the Director of Compliance, and the Investigator(s), may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the Investigator in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative attendance or questioning methods are desired, the parties should request them from the Appeals Officer at least two (2) business days prior to the hearing. Gateway will make reasonable accommodations for both parties in keeping with the principles of equity and fairness.
- Conduct of Hearing

The Appeals Officer shall preside over the hearing, call the hearing to order, ascertain the presence or absence of the Director of Compliance, Investigator, and the parties, confirm receipt of the notice of hearing, report any extensions requested or granted, and establish the presence of any Advisors. Formal rules of evidence shall not apply during the hearing.

 - *Investigator's Report and Testimony* - The Investigator will first present the written investigative report and may give a narrative report of the investigation, and then be subject to questioning by the Complainant, the Respondent, and the Appeals Officer. The Investigator may also call witnesses who will be subject to questioning by the Investigator, the Complainant, the Respondent and the Appeals Officer. The Investigator may also submit documentary evidence. The Investigator(s) will remain present during the entire hearing process.
 - *Complainant's Evidence* - The Complainant may give testimony and be subject to questioning by the Investigator, the Respondent (through the Appeals Officer) and the

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Appeals Officer. The Complainant may also call and question witnesses who may also then be questioned by the Respondent, the Investigator and the Appeals Officer. The Complainant may also submit documentary evidence.

- *Respondent's Evidence* - The Respondent may give testimony and be subject to questioning by the Investigator, the Complainant (through the Appeals Officer) and the Appeals Officer. The Respondent may also call and question witnesses who may also then be questioned by the Complainant, the Investigator and the Appeals Officer. The Respondent may also submit documentary evidence.

Additional Rights of the Appeals Officer - The Appeals Officer shall:

- Determine the relevancy and admissibility of any evidence offered at the hearing;
 - Have the authority to exclude a witness proposed by the Investigator or the parties if it is determined that his/her testimony would be redundant or not relevant;
 - Have the authority to dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the Appeals Officer's rulings.
- *Findings and Sanctions* - Following the hearing, the Appeals Officer shall determine whether a preponderance of the evidence demonstrates that the Respondent is responsible for the policy violations in question. If the Respondent is found responsible, the Appeals Officer shall determine appropriate sanctions. The Appeals Officer will prepare a written report detailing the finding and information supporting the finding. If the Respondent is found responsible, the report will conclude with the recommended sanctions.

The report shall be delivered to the Investigator and Director of Compliance within ten (10) calendar days of the hearing. Deviation from this timeline will be communicated to the Investigator, Director of Compliance, and the parties. The Director of Compliance will inform the parties of the determination within five (5) calendar days of receipt of the report, without significant time delay between notifications. Notification will be made by at least one of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College issued email account.

- *Appeal of Hearing Findings and Sanctions* - All requests for appeal consideration must be submitted in writing to the EEO Officer within ten (10) calendar days of the delivery of the written findings to the appealing party. Any party may appeal the findings and/or sanctions under the grounds described below:
 - To determine whether a procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
 - To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included. If additional information is offered or provided, the EEO Officer may refer the matter back to the Appeals Officer to consider the new information, provide either party with an opportunity to respond to such new information, and to determine whether the findings and sanctions should be changed.

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The appeal will proceed consistent with the procedures outlined above and will be conducted by the Provost or designee.

12. Long-Term Remedies/Actions

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Director of Compliance may utilize long-term remedies or actions to stop discrimination, harassment, sexual harassment or retaliation, remedy their effects on the individual and college community, and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees
- Providing campus escorts
- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director of Compliance, long-term remedies may also be provided even when the Respondent is found not responsible.

When no policy violation is found, the Director of Compliance will address any remedial requirements owed by the Recipient to the Respondent.

13. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Director of Compliance. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions (including emergency removal, expulsion, or termination from the College) or responsive or corrective actions and may be noted on a student's official transcript. An emergency removal will only be lifted when compliance is achieved to the satisfaction of the Director of Compliance.

14. Records policy

Records, both physical and electronic, of incidents or complaints and those produced during a civil rights inquiry or investigation are maintained no less than seven years by the Office for Equal Opportunity and Civil Rights. Records that pertain to students are part of their student record and subject to FERPA. Drafts and "working files" are not considered records that must be maintained by the College and are destroyed at the conclusion of an inquiry or investigation. Students and employees may access these records in accordance with applicable College policies on access to records.

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15. Statement of the Rights of the Parties

Both the reporting and the Respondent shall have the right to:

- Investigation and appropriate resolution of all credible allegations of sexual Harassment or discrimination made in good faith to College officials;
- Bring an advisor of their choosing to all phases of the investigation and resolution proceeding*;
- Ask the investigators to identify and question relevant witnesses, including expert witnesses;
- Be informed in advance, when possible, of any public release of information regarding the incident;
- Be treated with respect by College officials;
- Have College policies and procedures followed without material deviation and transparent to all parties;
- Have reports of sexual harassment /discrimination responded to promptly and with sensitivity by campus officials;
- Be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- A campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the party or others;
- Notification of and options for, and available assistance in, changing academic situations after an alleged incidents covered under policy H-110, if so requested and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
 - Exam (paper, assignment) rescheduling;
 - Taking an incomplete in a class;
 - Transferring class sections;
 - Temporary withdrawal;
 - Alternative course completion options.
- Have the College maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
- Be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- Be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to a party for compelling safety reasons (this does not include the name of the Complainant, which will always be revealed);
- Not have irrelevant prior sexual history admitted as evidence;
- Regular updates on the status of the investigation and/or resolution;

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- Have reports addressed by investigators and Director of Compliance who have received annual training;
- Preservation of privacy, to the extent possible and permitted by law;
- Meetings and/or interviews that are closed to the public;
- Petition that any College representative in the process be recused (removed) on the basis of demonstrated bias or conflict-of-interest;
- Have the College compel the participation of faculty and staff witnesses, and the opportunity (if desired) to provide the investigators with a list of potential questions to ask of witnesses, and the right to challenge documentary evidence;
- Submit a written statement describing the impact of the alleged discrimination/harassment to the civil rights investigator following determination of responsibility, but prior to sanctioning;
- Be promptly and simultaneously informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- Be informed simultaneously in writing of when a decision by the College is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and result of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College.

In addition, the Complainant shall have the right to:

- Not have any personally identifiable information released to the public, without their consent;
- Not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- Not be discouraged by College officials from reporting sexual harassment or discrimination to both on-campus and off-campus authorities;
- Be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the Complainant so chooses. This also includes the right not to be pressured to report, as well.

16. Disabilities Accommodation in the Equity Resolution Process

Gateway is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the College. Students needing such accommodations or support should contact the Director of Disability Support Services, and employees should contact the Director of Compliance, who will review the request and, in consultation with the person requesting the accommodation, and the Director of Compliance, determine which accommodations are appropriate and necessary for full participation.

17. Revision

These policies and procedures will be reviewed and updated regularly by the Director of Compliance. The College reserves the right to make changes to this document as necessary and once those changes are posted online at gtc.edu/eeo, they are in effect. The Director of Compliance may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Director of Compliance may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect

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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 the resolution will apply to resolution of incidents, regardless of when the incident occurred. The policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

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

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