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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.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the policy are being addressed at the same time. In such cases, the Director of Compliance may consult with the campus officials typically overseeing such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and staff handbooks.

### **1. Overview**

Upon notice to the Director of Compliance, this Resolution Process involves a prompt Initial Assessment 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:

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

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

- 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 Gateway 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. Initial Assessment

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 an Initial Assessment 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.

The Initial Assessment usually takes 1-5 business days and can include the following steps:

- The Director of Compliance reaches out to the Complainant to offer supportive measures.
- The Director of Compliance works with the Complainant to ensure they have an Advisor.
- The Director of Compliance works with the Complainant to determine which of three options to pursue: A Supportive Response, an Informal Resolution, or an Administrative Resolution.
- If a Supportive Response is preferred, the Director of Compliance works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution

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process is not initiated, though the Complainant can elect to initiate it later, if desired.

- If an Informal Resolution option is preferred, the Director of Compliance assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If Administrative Resolution is preferred, the Director of Compliance initiates the investigation process and determines whether the scope of the investigation will address:
  - Incident
  - A potential pattern of misconduct
  - A culture/climate issue

Based on the initial assessment, Gateway will initiate one of these responses:

- Supportive Response – measures to help restore the Complainant’s education access, as described in the Policy.
- Informal Resolution – typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Administrative Resolution – investigation of alleged policy violation(s) and recommended finding, subject to a determination by the Director of Compliance or Equal Opportunity Officer and the opportunity to appeal. The investigation and the subsequent Administrative Resolution determine whether the Equal Opportunity, Civil Rights, and Sexual Harassment policy has been violated. If so, the Recipient will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Director of Compliance. If at any point during the initial assessment or 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. The Complainant 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.

#### 4. Resolution Options

When the Complainant wishes to proceed or the College determines it will proceed, and the Initial Assessment 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** – Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution (mediation, restorative practices, facilitated dialogue, etc.), when the Respondent accepts responsibility for violating Policy, or when the Director of Compliance can resolve the matter informally by providing remedies to resolve the situation. The Director of Compliance has discretion to determine if an investigation will be

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paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

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

- **Alternative Resolution** - Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts, as appropriate. The parties must consent to the use of Alternative Resolution. The Director of Compliance determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution. In an Alternative Resolution, a trained administrator or third party facilitates communication among with the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies. The Director of Compliance maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions. Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though similarly structured conversations may be made available after the Administrative Resolution process is completed should the parties and the Director of Compliance believe it could be beneficial. The results of Alternative Resolution are not appealable.
- **Respondent Accepts Responsibility for Alleged Violations** - The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent accepts responsibility, the Director of Compliance determines that the individual is in violation of Gateway policy. The Director of Compliance then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community. If 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, to which the Respondent agrees, and 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, to which the Respondent agrees, and which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

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- **Administrative Resolution (investigation)** - Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Civil Rights, and Sexual Harassment Policy if proven. See item #7 for details on the investigation process.

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. Once Gateway has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Gateway will avoid all undue delays within its control.

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

### **Cross-claims**

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

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Director of Compliance. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy and/or other Gateway policies and procedures.

### **5. Supportive measures**

Gateway's Office for Equal Opportunity and Civil Rights offers and implements 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.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to Gateway's education program or activity, including measures designed to protect the safety of all parties and/or the Gateway's educational environment and/or to deter harassment, discrimination, and/or retaliation Referral to counseling, medical, and/or other health services.

The Director of Compliance promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Gateway will inform the Complainant, in writing, that they may file a Formal Complaint with Gateway either at that time or in the future, if they have not done so already. The Director of Compliance works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

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Gateway will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the Gateway's ability to provide those supportive measures. Gateway will act to ensure as minimal an academic/occupational impact on the parties as possible. Gateway 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 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 assistance
- 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.

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 reporting and responding parties.

### 6. Emergency Removal

In some cases, the Director of Compliance may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

1. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
2. Whether the Director of Compliance should pursue/sign a Formal Complaint absent a willing/able Complainant;
3. Whether to put the investigation on the footing of incident and/or pattern and/or climate;
4. To help identify potential predatory conduct;
5. To help assess/identify grooming behaviors;
6. Whether it is reasonable to try to resolve a complaint through Informal Resolution, and what modality may be most successful;
7. Whether to permit a voluntary withdrawal by the Respondent;
8. Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
9. Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader

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term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by specially trained CARE Team Members. A VRA authorized by the Director of Compliance should occur in collaboration with CARE Team. Where a VRA is required by the Director of Compliance, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

### 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 (which may be the Director of Compliance), 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.

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.

At the discretion of the Director of Compliance, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

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.

- In coordination with campus partners (e.g.: 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 Formal Resolution section, below;
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses.
- The Director of Compliance (or designee) will prepare the Notice of Investigation and Allegations (NOIA) on the basis of the Initial Assessment that includes the rights of all parties, on and off campus support services, information about the Equity Resolution Process;

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- 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 for 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);
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Gateway does not intend to rely in reaching a determination, for a ten (10) calendar 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. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor)
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- 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
- Share the report with the Director of Compliance for their review and feedback regarding thoroughness and formatting, but will not contribute information regarding substantive matter.
- Incorporate any relevant feedback and share the final report 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 and Advisors are also provided with a file of any directly related evidence that was not included in the report.
- Share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) calendar 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 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;

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

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

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, though this method is not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence in the determination of responsibility.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Process proceedings. College officials and investigators may utilize audio recording devices during the interview process. Recordings of interviews are not provided to the parties, but the parties will have the ability to review the summary of the interview once the investigation report is compiled.

Employees who are not contracted to work during the time-frame of the investigation and hearing are still expected to participate in Resolution Proceedings.

### 8. Advisors

#### A. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the Gateway community.

The Director of Compliance will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Gateway, the Advisor will be trained by Gateway and be familiar with the Gateway's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by Gateway, the Advisor may not have been trained by Gateway and may not be familiar with Gateway policies and procedures. Gateway, upon request, will provide an Advisors Guide as a resource to the outside Advisor.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to the completion of the final investigation report.

#### B. Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Gateway cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Gateway is not obligated to provide an attorney.

#### C. Pre-Interview Meetings

Advisors may request to meet with the investigator(s) conducting interviews/meetings in advance

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of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Gateway's policies and procedures. This right is afforded to both parties.

### **D. Advisor Violations of Gateway Policy**

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

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

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented, including Gateway requiring the party to use a different Advisor or providing a different Recipient-appointed Advisor. Subsequently, the Director of Compliance will determine how to address the Advisor's non-compliance and future role in the Resolution Process.

### **E. Sharing Information with the Advisor**

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

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

If a party requests that all communication be made through their attorney Advisor, Gateway will generally comply with that request subject to the discretion of the Director of Compliance.

### **F. Privacy of Records Shared with Advisor**

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

### **G. Expectations of the Advisor**

Gateway generally expects an Advisor to adjust his/her schedule to allow the Advisor to attend

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Gateway meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

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.

### H. Expectations of the Parties with Respect to Advisors

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

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

As a public entity, Gateway fully respects and accords the Weingarten rights of employees. 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.

### I. Assistance in Securing 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.

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

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

Complainants may wish to contact organizations such as:

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

## 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.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so

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choose, except for information the parties agree not to disclose as part of an Informal Resolution. Gateway encourages parties to discuss any sharing of information with their Advisors before doing so.

### 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. has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution Process. 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 Formal Resolution, and any party participating in informal resolution can stop that process at any time and request a shift to Formal 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 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.

- **Alternative Resolution Approaches**

Alternative Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, etc. by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach. Gateway attempts to complete all resolutions within ninety (90 days), but may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The Director of Compliance may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the

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parties

- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
  
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Director of Compliance. The Director of Compliance is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Director of Compliance maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

- **Respondent Admits Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Director of Compliance will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Director of Compliance will determine whether all parties and Gateway are able to agree on responsibility, restrictions, , remedies, and determines the appropriate sanctions. If so, the Director of Compliance implements the accepted finding that the Respondent is in violation of Gateway policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate

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administrator(s), as necessary.

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 upon a resolution, the Formal Grievance 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 harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

- **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. A negotiated resolution is often used for disability related complaints such as barrier removal and access prevention.

### **B. Formal Resolution**

Formal 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 Formal 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.

Formal 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 Investigator 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 Director of Compliance or the Equal Opportunity Officer. The Investigator 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(s), 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

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Compliance with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

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 Formal 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 common sanctions that may be imposed upon students singly or in combination, depending on the nature and facts of a specific claim.

- Educational Activity: assignment of an appropriate educational activity, such as a webinar, reading, training, etc., that creates awareness and spurs behavioral change.
- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any Gateway policy, procedure, or directive will result in more severe sanctions/responsive actions.
- 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.

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- 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.
- 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

- Training: assignment of an appropriate training program (webinar, in-person event, etc.) that creates awareness and spurs behavioral change.
- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any Gateway policy, procedure, or directive will result in more severe sanctions/responsive actions.
- 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.

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- 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.

Generally, 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).

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

### **9. Withdrawal or Resignation While an Investigation is Pending**

#### **Students:**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Gateway, the Resolution Process typically ends with a dismissal, as Gateway has lost primary disciplinary jurisdiction over the withdrawn student. However, Gateway may continue the Resolution Process when, at the discretion of the Director of Compliance, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, Gateway will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Gateway in any capacity. The Registrar's Office will be notified, accordingly. Such exclusion applies to Gateway locations.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to Gateway unless and until all sanctions, if any, have been satisfied.

#### **Employees:**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as Gateway has lost primary disciplinary jurisdiction over the resigned employee. However, Gateway may continue the Resolution Process when, at the discretion of the Director of Compliance, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, Gateway will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

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

### 10. Appeals

Any party may submit a written request for appeal (“Request for Appeal”), but it must be submitted in writing to the Director of Compliance within 5 business days of the delivery. 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-maker 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.

#### Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- 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;
- 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;
- 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, then the Appeal Decision-maker will notify all parties, the Director of Compliance, and, when appropriate, the Investigator(s).

All other parties and their Advisors, the Director of Compliance, and, when appropriate, the Investigator(s) and/or the original Hearing Officer will be mailed, emailed, and/or provided a hard copy of the Request for an Appeal with the approved grounds and then be given 5 (five) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, 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

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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.

### **Sanctions Status During the Appeal**

Any sanctions imposed as a result of the determination are stayed (not imposed) 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-determination, then emergency removal procedures (detailed above) for a meeting on the justification for 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 determination, 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 Formal Resolution are implemented immediately unless the Director of Compliance stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

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- 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 Formal Resolution Process, including a new resolution administrator.
- The results of a new Formal 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

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

- Where the Formal 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.

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- 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 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

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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.

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

### 11. 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

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- 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 Gateway to the Respondent.

### **12. 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. 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 the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Recipient. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees. A suspension will only be lifted when compliance is achieved to the satisfaction of the Director of Compliance.

### **13. 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.

Records of the following are retained:

1. Each civil rights investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the Gateway’s education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Director of Compliance, Investigators, Decision-makers, and any person who facilitates an Informal Resolution Process. Gateway will make these training materials publicly available on Gateway’s website;
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to Gateway’s education program or activity;
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

### **14. Statement of the Rights of the Parties**

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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.

### **15. 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.

### **67. 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](http://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 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,

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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.