

Title IX Sexual Harassment

OPERATIONAL POLICY STATEMENT

I. RATIONALE FOR OPERATIONAL POLICY

Yavapai College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment/discrimination, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Yavapai College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment, and for allegations of retaliation. Yavapai College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

II. DEFINITIONS

1. Actual Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of alleged harassing, discriminatory, and/or retaliatory conduct.
2. Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if a hearing is held. This individual may be a District or college employee, attorney, or member of the community.
3. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
4. Formal Complaint means a document filed with the Title IX Coordinator/signed by a Complainant or signed by the Title IX Coordinator alleging against a Respondent sexual harassment or retaliation for engaging in a protected activity and requesting that Yavapai College investigate the allegation.

5. Day(s) means a business day when Yavapai College is in normal operation.
6. Education program or activity means locations, events, or circumstances where Yavapai College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Yavapai College.
7. Final Determination/Finding means a conclusion by preponderance of the evidence that the alleged conduct occurred, or did not occur, and whether it did, or did not, violate policy.
8. Formal Grievance Process means a method of formal resolution designated by Yavapai College to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
9. Grievance Process Pool means any investigators, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
10. Hearing Decision-maker means a person who has decision-making and sanctioning authority within Yavapai College's Formal Grievance process.
11. Investigator means the person or persons charged by Yavapai College with gathering facts about an alleged violation of this Operational Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
12. Mandated (Mandatory) Reporter means an employee of Yavapai College who is obligated by policy to share knowledge or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Mandatory Reporter under this operational policy does not diminish the requirement under Arizona state law to report alleged or suspected child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporter responsibility in this Operational Policy.
13. Official with Authority (OWA) means an employee of Yavapai College explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of Yavapai College.
14. Parties include the Complainant(s) and Respondent(s), collectively.
15. Promptness means the time period in which allegations are acted upon once Yavapai College has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances

that can cause a resolution to take longer, but Yavapai College will avoid all undue delays within its control.

16. Remedies means post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Yavapai College's educational program.
17. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
18. Resolution means the result of an informal or Formal Grievance Process.
19. Sanction means a consequence imposed by Yavapai College on a Respondent who is found to have violated this operational policy.
20. Sexual Harassment means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
21. Title IX Coordinator is at least one official designated by Yavapai College to ensure compliance with Title IX and Yavapai College's Title IX program. References to the coordinator throughout this operational policy may also encompass a designee of the Coordinator for specific tasks.
22. Title IX Team refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

III. TITLE IX COORDINATOR

Yavapai College has a designated Title IX Coordinator who oversees implementation of this operational policy. The Title IX Coordinator has the primary responsibility for coordinating Yavapai College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this operational policy.

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

Monica Belknap
Title IX Coordinator
900 East Sheldon
Prescott, AZ 86301
Phone: 928-776-2211
Email: Monica.Belknap@yc.edu

The college Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Associate Vice President of Student Affairs and Dean of Students at Tania.Sheldahl@yc.edu or at 928-776-2128. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

IV. OFFICIALS WITH AUTHORITY AND MANDATED (MANDATORY) REPORTERS

OFFICIALS WITH AUTHORITY

Yavapai College has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed in Section 2. Definition 22. Title IX Team, these Officials with Authority listed below may also accept notice or complaints on behalf of Yavapai College.

Title IX Coordinator
Deputy Title IX Coordinator College
President
College Vice Presidents
College Associate Vice Presidents
Chief Human Resources Officer
Academic Deans
Associate Academic Deans
College Police Officers Athletic
Director

MANDATED (MANDATORY) REPORTERS

Yavapai College has also classified all employees as Mandatory Reporters of any knowledge they have that a member of the college community is experiencing harassment, discrimination, and/or retaliation. Mandatory Reporters are expected to report actual or suspected discrimination or harassment to the Title IX Coordinator or to any Official With Authority.

Failure of an employee, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Yavapai College policies and can be subject to disciplinary action, up to and including termination, for failure to comply.

Anonymous Notice

At the request of a Complainant, notice may be given to the Title IX Coordinator anonymously, without identification of the Complainant. Anonymous notice will be investigated by Yavapai College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits Yavapai College's ability to investigate, respond, and provide remedies, depending on what information is shared. When a Complainant has made a request for anonymity, the Complainant's

personally identifiable information may be withheld, but all other details must be shared with the Title IX Coordinator. Supportive measures may be offered as the result of such disclosures without formal action by Yavapai College.

V. CONFIDENTIAL RESOURCES AND FEDERAL RESOURCES

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

Off-campus (non-employees):

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

External Inquiries may be made to:

Office for Civil Rights,
Denver Office
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582 Telephone:
(303) 844-5695
Facsimile: (303) 844-4303
Email: OCR.Denver@ed.gov

VI. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator or Officials with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed. This information can be found on the Yavapai College website.
- 2) Report online, using the reporting form posted at [Online Reporting Form](#). Anonymous reports are accepted, but can give rise to a need to investigate. Yavapai College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Since anonymous reporting carries no obligation to initiate a formal response and since Yavapai College

respects a Complainant's requests to dismiss complaints, unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Yavapai College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Yavapai College) that contains the Complainant's physical or digital signature, which can include the Complainant's name on the email, or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

VII. SUPPORTIVE MEASURES

Yavapai College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

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

The Title IX Coordinator shall make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Yavapai College will inform the Complainant, in writing, that they may file a formal complaint with Yavapai College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the planned and implemented supportive measures.

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

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to the Student Assistance Program
- Referral to community-based service providers
- Student financial aid counseling

- Altering work arrangements for employees or student-employees ● Altering campus housing assignments.
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders, when applicable
- Timely warnings under the Clery Act
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

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

VIII. EMERGENCY REMOVAL

Yavapai College can act to remove a Respondent entirely or partially from its education program/activities or District employment 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 Title IX Coordinator in conjunction with the college Behavioral Intervention Team (also known as the CARE Team) using its standard objective violence risk assessment procedures.

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

In all cases where an emergency removal is imposed:

1. The Respondent will be given written notice of the action. In the written notice will be the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the underlying Title IX allegations, but rather an administrative process intended to determine solely whether the emergency removal is appropriate.
2. The Respondent has three (3) days after the receipt of the emergency removal to request the meeting with the Title IX Coordinator. If the Respondent does not make such a request within the three (3) day time period, objection to the emergency removal is deemed waived.
3. The Respondent may be accompanied by an Advisor of their choosing in the administrative meeting with the Title IX Coordinator.

4. 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.
5. The Respondent understands there is no appeal process for emergency removal decisions.
6. A Complainant and their Advisor may be permitted to participate in this meeting, if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.
7. Yavapai College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns

For additional information regarding emergency removals, please see Emergency Removal FAQ Sheet on YC's Title IX Sexual Harassment webpage.

IX. PRIVACY

Every effort is made by Yavapai College to preserve the privacy of report under this operational policy.

For additional information regarding privacy and confidentiality under this operational policy, please see Privacy and Confidentiality Procedures Document on YC's Title IX Sexual Harassment webpage.

X. JURISDICTION

This operational policy applies to all of Yavapai College education program and activities, to conduct that takes place on the campus or on property owned or controlled by Yavapai College, at Yavapai College sponsored events, or in buildings owned or controlled by recognized student organizations. The Respondent must be a member of Yavapai College community in order for its policies to apply. Nevertheless, even when the Respondent is not a member of Yavapai College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

This operational policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Yavapai College's educational program. Yavapai College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Yavapai College interest. For example, where the effects of the off-campus conduct impede access to Yavapai College's educational programs or activities.

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

Similarly, the Title IX Coordinator may be able to provide guidance for a student or employee Complainant who experiences sexual harassment/discrimination in an environment external to

Yavapai College by referring the Complainant to the Office of Student Conduct & Community Standards or to the Human Resources Department.

For additional information regarding Yavapai College jurisdiction over Title IX matters, please see the Jurisdiction Procedures document on YC's Title IX Sexual Harassment webpage.

XI. TIME LIMITS ON REPORTING

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

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of operational policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When the notice/complaint is affected by significant time delay, Yavapai College will typically apply the operational policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

XII. ONLINE HARASSMENT AND MISCONDUCT

This operational policy is written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Yavapai College's education program and activities or use Yavapai College networks, technology, or equipment.

While Yavapai College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Yavapai College, it will engage in a variety of means to address and mitigate the effects. Any online postings or other electronic communication by students and employees, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of Yavapai College's control (e.g., not on Yavapai College networks, websites, or between Yavapai College email accounts) will be subject to this operational policy when such online conduct can be shown to cause a substantial in-program disruption to the student's educational pursuit of Yavapai College's educational programs and/or activities.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Yavapai College only when such speech is made in an employee's official or work-related capacity, including where the speaker holds themselves out as employees of Yavapai College. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech will not be subjected to discipline.

XIII. TITLE IX SEXUAL HARASSMENT

The Department of Education's Office for Civil Rights (OCR), and the State of Arizona regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

For Title IX complaints, Yavapai College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment/discrimination, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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

- 1) Quid Pro Quo:
 - a. an employee of Yavapai College,
 - b. conditions the provision of an aid, benefit, or service of Yavapai College,
 - c. on an individual's participation in unwelcome sexual conduct; and/or

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to Yavapai College's education program or activity. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- 3) Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.
 - b) Forcible Rape:
 - i) Penetration,
 - ii) no matter how slight,
 - iii) of the vagina or anus with any body part or object, or iv) oral penetration by a sex organ of another person,
 - v) without the consent of the Complainant.
 - c) Forcible Sodomy:
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or against that person's will (non-consensually), or iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age¹ or because of temporary or permanent mental or physical incapacity.
 - d) Sexual Assault with an Object:
 - i) The use of an object or instrument to penetrate,

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- ii) however slightly,
 - iii) the genital or anal opening of the body of another person, iv) forcibly,
 - v) and/or against that person's will (non-consensually),
 - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e) Forcible Fondling:
- i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly, iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f) Sex Offenses, Non-forcible:
- i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Arizona law.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the Arizona statutory age of consent, which is the age of 18 years old.
- 4) Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. iii. Dating violence does not include acts covered under the definition of domestic violence.

- 5) Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
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- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Arizona or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state of Arizona.

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

- 6) Stalking, defined as:
- a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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

Force, Coercion, Consent, and Incapacitation

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

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

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

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

Consent is:

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

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

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

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

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

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

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

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

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

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

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

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

XIV. RETALIATION

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

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

It is prohibited for Yavapai College or any member of Yavapai College’s community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or operational policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this operational policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The following do not constitute retaliation under this operational policy:

1. The exercise of rights protected under the First Amendment.

2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this operational policy and procedure. A determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

XV. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Yavapai College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon the Title IX Coordinator's decision that there is a compelling risk to health and/or safety that requires Yavapai College to pursue formal action to protect the community.

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

When Yavapai 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 operational Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant. The goal is to provide the Complainant with as much control over the process as possible, while balancing Yavapai College's obligation to protect its community.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Yavapai College, and to have the incidents investigated and properly resolved through these procedures.

For more information related to situations when a Complainant does not wish to proceed, please see the Complainant Rights document on YC's Title IX Sexual Harassment webpage.

XVI. FEDERAL TIMELY WARNING OBLIGATIONS

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

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

XVII. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this operational policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be referred to either the student code of conduct or employee conduct policies for appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator or

hearing decision-maker will be subject to discipline under the appropriate student or employee operational policy.

XVIII. AMNESTY FOR COMPLAINANTS AND WITNESSES

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

It is in the best interests of Yavapai College community that Complainants choose to report misconduct to Yavapai College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, Yavapai College maintains an operational policy of offering parties and witnesses amnesty from minor operational policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident being reported.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Yavapai College maintains a policy of amnesty for students who offer help to others in need. While operational policy violations cannot be overlooked, Yavapai College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

XIV. FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA based crimes, which include sexual assault, domestic violence, dating violence, and stalking (VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040); and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or offcampus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: presidents, vice-presidents, student affairs/student conduct staff, campus law enforcement/public safety, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

PROCEDURE

1. Procedural Overview For Alleged Violations of Title IX Sexual Harassment Operational Policy

Yavapai College will act on any formal or informal notice/complaint of violation of the Title IX Sexual Harassment operational policy (“the Operational Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment as defined by Title IX (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members. Allegations of sexual harassment and discrimination that does not meet the requirements of Title IX, 34 CFR Part 106.30, may be referred to the Office of Student Conduct & Community Standards (for alleged violations of the Student Code of Conduct) or to the Human Resources Department (for alleged violations of Human Resources Policies).

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of this Operational Policy, Yavapai College will initiate a prompt initial assessment to determine the next steps. Yavapai College will initiate at least one of three responses:

- 1) Offering supportive measures only because the Complainant does not wish to proceed formally;
- 2) Offering supportive measures and initiating an informal resolution; or

- 3) Offering supportive measures and initiating a Formal Grievance Process including an investigation and a hearing to determine whether or not the Operational Policy has been violated.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Operational Policy, the Title IX Coordinator (or designee) engages in an initial assessment, which is typically one (1) to five (5) business days in duration.

4. Emergency Removal

In the event an emergency removal is considered, the Title IX Coordinator will follow the procedures outlined in Section VIII of this operational policy.

5. Dismissal (Mandatory and Discretionary)

Mandatory Dismissal: The Title IX Coordinator must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

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

Discretionary Dismissal: The Title IX Coordinator may choose to dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it; or
- 2) The Respondent is no longer enrolled in or employed by Yavapai College; or
- 3) Specific circumstances prevent Yavapai College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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

Discretionary dismissal decisions may be appealed by any party under the procedures for appeal below.

6. Counterclaims

Yavapai College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Yavapai College 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 made with retaliatory intent will not be permitted and may constitute a violation of this operational policy.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

7. Right to an Advisor

The parties may each have an Advisor of their choice. 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 Yavapai College community. The Advisor may be present with the Complainant or Respondent for all of their meetings and interviews within the resolution process, if they so choose.

The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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

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

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

For more information regarding the training received by an Advisor, please see the Advisors FAQ on YC's Title IX Sexual Harassment webpage.

a. Advisors in Hearings/Yavapai College-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Yavapai College will appoint a trained Advisor for the limited purpose of conducting any direct and cross-examination.

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

b. Pre-Interview Meetings

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

c. Advisor Violations of Yavapai College Operational Policy

All Advisors are subject to the same Yavapai College policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings. Advisors may not address Yavapai College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decisionmaker 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 operational policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

d. Sharing Information with the Advisor

Parties may share documentation and evidentiary information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

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

If a party requests that all communication be made solely through their attorney Advisor, Yavapai College will not comply with that request.

e. 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 Yavapai College. Yavapai College 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 Yavapai College's privacy expectations.

f. Expectations of an Advisor

Yavapai College generally expects an Advisor to adjust their schedule to allow them to attend Yavapai College meetings when planned. At the sole discretion of the Title IX Coordinator, scheduled meetings may be changed to accommodate an Advisor's inability to attend. Such discretion is limited to weighing if doing so does not cause an unreasonable delay. The decision to change meetings dates and times is final.

Yavapai College 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.

g. Expectations of the Parties with Respect to Advisors

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

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

8. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Yavapai College operational policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Yavapai College encourages parties to discuss this with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include four different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism, such as mediation;
- When the parties agree to resolve the matter by entering into an Informal Resolution Agreement;
- When the Respondent accepts responsibility for violating operational policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

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

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

9. Formal Grievance Process

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this operational policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

For more information regarding the Formal Grievance Pool—including selection, training, and responsibilities—please see the Formal Grievance Pool information sheet on YC’s Title IX Sexual Harassment webpage.

10. Formal Grievance Process: Notice of Investigation and Allegations

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

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Yavapai College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Yavapai College’s operational policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Yavapai College’s operational policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A suggested date and time for an initial meeting (proper time will be given to allow for the selection of an advisor)
- The name(s) and contact information of the individual(s) from the Grievance Process Pool that will conduct the investigation.
- Information on raising concerns with regard to a conflict of interest or bias by the Investigator(s) or the Title IX Coordinator.
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Yavapai College records, or emailed to the parties' Yavapai College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

11. Resolution Timeline

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

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

12. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The parties may, at any time during the resolution process contact the Title IX Coordinator to raise a concern regarding bias or conflict of interest. The Title IX Coordinator will ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, the parties may contact the Associate Vice President of Student Affairs.

The Formal Grievance Process involves an objective evaluation of all relevant inculpatory and exculpatory evidence obtained. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Yavapai College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a operational policy violation by the applicable preponderance of the evidence standard.

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

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

In the circumstance where a short delay is requested by law enforcement as a result of a criminal investigation requested by the Complainant, the Title IX Coordinator may reasonably delay the commencement of any Title IX investigation until Respondent has been criminally charged. Yavapai College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Yavapai College will implement supportive measures as deemed appropriate.

Yavapai 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.

14. The Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. Campus Safety may assist a Title IX investigation with the collection and storage of relevant evidence.

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

For additional information regarding steps in the investigative process, please see the Investigative Process information sheet on YC's Title IX Sexual Harassment webpage.

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Yavapai College are expected to cooperate with and participate in Yavapai College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of operational policy and may warrant 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. Yavapai College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in addition to being interviewed. 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.

16. Recording of Interviews

No audio or video recording of any kind is permitted during investigation meetings, except for recordings initiated by Yavapai College.

17. Evidentiary Considerations in the Investigation

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

18. Referral for Hearing

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

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is made available to the Parties and the Decision-maker for review and comment, unless all parties and the Decision-maker agree to an expedited timeline. This agreement must be in writing.

The Title IX Coordinator will select a decision-maker that is hired from a list of approved attorneys for any hearing held under the Title IX operational policy.

19. Hearing Decision-maker Composition

Yavapai College will designate a single Decision-maker. The single Decision-maker will also Chair the hearing. The Decision-maker will not have had any previous involvement with the investigation. The Decision-maker is an out-sourced position that will have had no previous involvement in the matter at hand.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider:

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

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties, if they so choose, may submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

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

21. Notice of Hearing

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

The notice will contain:

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

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

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

22. Virtual Hearings

All hearings will occur virtually. The Title IX Coordinator will arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

23. Pre-Hearing Preparation

The decision-maker, or designee, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing. During the ten (10) business day period prior to the hearing, the parties have the opportunity to review and comment on the final investigation report and available evidence.

24. Hearing Procedures

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

Participants at the hearing will include the decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

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

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

25. Joint Hearings

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

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

26. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decisionmaker may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of operational policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

27. Recording Hearings

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

The Decision-maker, the parties, their Advisors, and appropriate administrators of Yavapai College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording.

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

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the operational policy violation(s) in question. The preponderance of the evidence standard of proof is used.

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

The decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, but they are not binding.

The Decision-maker will review the statements and any pertinent conduct history provided by the investigator(s) and will determine the appropriate sanction(s)[in consultation with other appropriate administrators, as required.

The decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted electronically to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the extension.

29. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker's deliberation statement. The Notice of Outcome will then be shared with the parties simultaneously.

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

30. Sanctions

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

- The nature, severity of, and circumstances surrounding the violation(s)

- The Respondent’s disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the 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 Decision-maker

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

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

a. Student Sanctions

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

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any Yavapai College operational policy, procedure, or directive will result in more severe sanctions/responsive actions. Terms of the warning may include no-contact orders, and/or other measures deemed appropriate.
- *Required Counseling:* A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional operational policy, providing for more severe disciplinary sanctions in the event that the student or student organization is found in violation of any institutional operational policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Eviction from Campus Housing:* A mandate that the student is required to move out of the residence halls within a specified period of time (the “Effective Date”). Terms of the eviction will be articulated and will include a no trespass notification stating that upon the Effective Date, the student is prohibited from returning to the residence halls and its surrounding areas.
- *Deferred Eviction from Campus Housing:* In certain circumstances, a deferral of an eviction may be imposed, and will include a written reprimand for operational policy violation(s), providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional operational policy, procedure, or directive within a specified period of time. A deferred eviction may also include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus,

nocontact orders, and/or other measures deemed appropriate. *Suspension:* Termination of student status for a definite

period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Yavapai College.

- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Yavapai College-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma:* Yavapai College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* Yavapai College reserves the right to revoke a degree previously awarded from Yavapai College for fraud, misrepresentation, and/or other violation of Yavapai College, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including Yavapai College registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, Yavapai College may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

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

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, Yavapai College may assign any other sanctions as deemed appropriate.

31. Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Title IX operational policy, Yavapai College may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Yavapai College, the resolution process ends, as Yavapai College no longer has disciplinary jurisdiction over the withdrawn student. A student who withdraws or leaves while the process is pending may not return to Yavapai College. Such exclusion applies to all campuses of Yavapai College. A hold will be placed on their ability to be readmitted. They may also be barred from Yavapai College property and/or events.

However, Yavapai College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

During the resolution process, Yavapai College may put a hold on a responding student's transcript or place a notation on a responding student's transcript that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Yavapai College no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire with Yavapai College or any campus of Yavapai College, and the records retained by the Title IX Coordinator will reflect that status.

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

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

32. Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome Letter. Once the five (5) days has passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Appeal Chair, specifically the Associate Vice President of Student Affairs for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

a. Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Operational Policy, that request will be denied by the Appeal Chair 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 Operational Policy, then the Appeal Chair will:

1. notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker.
2. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker an emailed appeal request with the approved grounds
3. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and when appropriate, the Investigators and/or the original Decision-maker five (5) business days to submit a response to the portion of the appeal that was approved and involves them.
4. Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence.
5. Prepare a Notice of Appeal Outcome letter and send it to all parties simultaneously, which includes 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 Yavapai College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Yavapai College 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' Yavapai College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

All decisions by the Appeal Chair are final and may not be appealed by either party.

b. Sanctions Status During the Appeal

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Yavapai College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

33. Long-Term Remedies/Other Actions

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

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Referral to a Student Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Operational Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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

When no operational policy violation is found, the Title IX Coordinator will address any remedies owed by Yavapai College to the Respondent to ensure no effective denial of educational access.

Yavapai College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Yavapai College's ability to provide these services.

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

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

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 Yavapai College and may be noted on a student's official transcript.

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

35. Recordkeeping

Yavapai College will maintain for a period of [at least] seven years records of:

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

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

36. Disabilities Accommodations in the Resolution Process

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

process. Anyone needing such accommodation should contact the Title IX Coordinator for assistance.

37. Revision of this Operational Policy and Procedures

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

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require operational policy or procedural alterations not reflected in this Operational Policy and procedures.

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

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

This Operational Policy and procedures are effective August 14, 2020.

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RELATED INFORMATION

OPERATIONAL POLICY HISTORY

Adopted 8/14/2020

Revised 10/12/2020

Revised to "Operational" Policy and Owner Reassigned 3/5/2021
