

Aquinas College's Procedures for Responding to Reports of Sexual Misconduct & Harassment

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E-Mail: OCR.Cleveland@ed.gov

For complaints involving employees, external inquiries may also be made to: [Equal Employment Opportunity Commission](#) ("EEOC"):

EEOC – Headquarters
131 M Street, NE
Washington, DC 20507
Phone: (202) 663-4900

EEOC – Detroit Field Office

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- iii. If the Formal Grievance Process is preferred and a Formal Complaint is submitted, the Title IX Coordinator determines whether the alleged misconduct falls within the scope of the 2020 Title IX Regulations:
 - a. If it does, the Title IX Coordinator will initiate the Formal Grievance Process.
 - b. If it does not, the Title IX Coordinator determines that the regulations

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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 Behavioral Intervention Team, using its standard objective violence risk assessment procedures. The Respondent will have notice and an opportunity to challenge the decision immediately following removal. The College has the authority and discretion to place an employee on administrative leave during the pendency of an investigation, even where the requirements for an emergency removal are not met.

Where the Respondent is an employee, existing provisions for interim action are applicable.

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. In

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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 or Human Resources Director (when an employee respondent is involved) 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 policy or procedural alterations not reflected in the Policy and these procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that

INFORMAL RESOLUTION OPTIONS

In some cases, where desired by all parties and determined appropriate by the College, an Informal Resolution process can be considered as an alternative to the Formal Grievance Process. Informal Resolution can include the following different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism, such as mediation, and/or

- When the Respondent

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- iii Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by either party under the appeal section of these procedures.

2. Counterclaims

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

Counterclaims determined to have been reported in good faith will be processed using these procedures. 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. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of policy.

3. False Allegations and Evidence

Deliberately false and/or malicious accusations under the Policy and these procedures are serious offenses and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation may be subject to discipline.

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose.⁸ The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.⁹ While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties at any meeting and/or proceeding, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

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(s). All Advisors are subject to Aquinas College policies and procedures.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses.

⁸ This could include an attorney, advocate, or support person (witnesses are not entitled to Advisors within the process, though they can be advised externally).

⁹ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. "Eligible" cannot

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Parties and witnesses will submit to indirect questioning by the Decision-makers and then by the parties through their Advisors. All questions are subject to a relevance determination by the Chair, who has final say on all questions and determinations of relevance. Any party or witness may choose not to answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility.

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

If a party's Advisor of choice refuses to comply with the Chair's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a college-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to ask questions on behalf of that party.

Hearings (but not deliberations) are recorded by the 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(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be allowed to make a copy of the recording without permission of the Title IX Coordinator.

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote of the panel of Decision-makers is required to determine the finding. The preponderance of the evidence standard of proof is used.

The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers will review any previously submitted party impact statements and any pertinent conduct history and will determine the appropriate sanction(s).

The Chair 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 not relied upon in its determination, credibility assessments, and any sanctions. This statement will be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations. Parties will be notified if the Title IX Coordinator extends this window.

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome, which includes the final determination, rationale, and any

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sanction(s) (if applicable), will be shared simultaneously with the parties and their Advisors within three (3) business days of receiving the deliberation statement.

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

The Notice of Outcome will include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

Factors considered when determining sanctions may include:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the sexual misconduct and/or harassment;
- The need for sanctions/responsive actions to prevent the future recurrence of sexual misconduct and/or harassment;
- The need to remedy the effects of the sexual misconduct and/or harassment on the Complainant and the community;
- Any other information deemed relevant by the Decision-maker(s).

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 these procedures are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

3. Student Sanctions/Corrective Actions

For student Respondents sanctions can include but are not limited to a written warning, probation, suspension or expulsion from Aquinas College, and/or other actions as deemed appropriate.

4. Employee Sanctions/Corrective Actions

For employee Respondents sanctions can include but are not limited to a written warning, a performance improvement plan, suspension, termination from Aquinas College, and/or other actions as deemed appropriate.

5. Failure to Comply with Sanctions

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(s) (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 the 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.

1. Students

Should a student Respondent permanently withdraw from Aquinas College, the College may dismiss the Formal Complaint or any allegations therein, at any time during the investigation or hearing.

If the Formal Complaint is dismissed, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual misconduct and/or harassment. The student who withdraws or leaves while the process is pending may not return to Aquinas College. Admissions will be notified that they cannot be readmitted, and they may also be barred from Aquinas College property and/or events.

If the resolution process continues and the student is found in violation, that student is not permitted to return to the College unless and until all sanctions have been satisfied.

2. Employees

Should an employee Respondent resign with unresolved allegations pending, the College may dismiss the Formal Complaint or any allegations therein, at any time during the investigation or hearing.

If the Formal Complaint is dismissed, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual misconduct and/or harassment. The employee who resigns with unresolved allegations pending is not eligible for rehire with Aquinas College, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Any party may submit a Request for Appeal, in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will be appointed by the Title IX Coordinator to Chair the appeal review.

The request for appeal will be forwarded to the Appeal Chair who will conduct a review for standing and determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

3. Grounds for Appeal

Appeals are limited to the following grounds:

- i. A procedural irregularity in the process of the investigation or hearing.

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The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.

Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final.

In rare cases where a substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).

The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.

In cases where the appeal results in reinstatement to

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

Each party has an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose.¹² The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹³ While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak

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In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status.

Following the conclusion of the resolution process, and in addition to any sanctions implemented or in place of sanctions if none are determined applicable, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community

ADMINISTRATIVE RESOLUTION FOR EMPLOYEE RESPONDENTS ("PROCESS C")

Aquinas College will act on any complaint of violation of the Policy Prohibiting Sexual Misconduct & Harassment ("the Policy") that is received by the Title IX Coordinator.

"Process C" is a general term that refers to resolution processes maintained by Human Resources that are applicable to allegations involving Employee Respondents. Process C is applicable only when Process A is inapplicable, or allegations subject to Process A have been dismissed, as determined by the Title IX Coordinator, and as outlined in these procedures. In these instances, Employee Respondents will be referred to the Director of Human Resources (or their designee) who determine the applicable resolution process.

