

MARION MILITARY INSTITUTE
GRIEVANCE PROCEDURES FOR COMPLAINTS OF TITLE IX SEXUAL HARASSMENT

- A. Policy Statement
- B. Purpose
- C. Jurisdiction and Application of these Procedures
- D. Title IX Coordinator
- E. Definitions
- F. Prohibited Conduct
- G. Reporting Procedures
- H. Supportive Measures
- I. Emergency Removals and Administrative Leave
- J. Initial Evaluation & Complaint Dismissals
- K. Complaint Investigation
- L. Hearing
- M. Appeals
- N. Informal Resolution
- O. Confidentiality & Privacy
- P. Retaliation
- Q. Free Speech and Academic Freedom
- R. Records Retention

A. Policy Statement

Marion Military Institute (the College) is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act, the Jeanne Clery Campus Safety Act, and the Violence Against Women Act (VAWA). Sexual harassment and retaliation under these Procedures will not be tolerated by the College and is grounds for disciplinary action, up to and including, permanent dismissal from the College and/or termination of employment.

The College has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator.

B. Purpose

The College takes all reported sexual harassment seriously. The College will promptly take action against any individuals within its control who are found responsible for violating these Procedures. Additionally, reported sexual harassment that does not meet the definitions and jurisdiction of these Procedures will be referred for review under the Student Code of Conduct, or the Employee Policy, whichever may be applicable.

C. Jurisdiction and Application of these Procedures

These Procedures apply to sexual harassment occurring under the College's education program or activity. Conduct that occurs under the College's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by the College or by a student organization that is officially recognized by the College and where the College exercises control over the Respondent at the time the alleged conduct occurs. A Complainant may only file a formal complaint if the Complainant is participating or attempting to participate in the College's education program or activity. These Procedures do not cover conduct that occurs outside of the United States.

If the alleged conduct does not meet the definition of sexual harassment under these Procedures, the College will provide supportive measures when reasonably available and when possible take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

D. Title IX Coordinator

The College's Title IX Coordinator is the person designated by the College who is responsible for coordinating the College's compliance with its obligations under Title IX. The Title IX Coordinator is responsible for the administrative response to complaints of sexual harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain the College's policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Assistant Title IX Coordinators to facilitate any of these responsibilities.

Any member of the College's community may contact the Title IX Coordinator with questions. The Title IX Coordinator and Assistant Title IX Coordinator(s) contact information is as follows:

Carmon Fields
Title IX Coordinator
1101 Washington Street, Marion, AL 36756
334-683-2368
cfields@marionmilitary.edu

Dawn Curtis
Deputy Title IX Coordinator
1101 Washington Street, Marion, AL 36756
334-683-2350
dcurtis@marionmilitary.edu

In addition to the Title IX Coordinator and Assistant Title IX Coordinator(s), the Title IX staff may include Investigators, Hearing Decisionmakers, Appellate Decisionmakers, Advisors, and Informal Resolution Facilitators who have roles in the formal grievance process, which are detailed in these Procedures.

The Title IX Coordinator, Assistant Title IX Coordinator(s), Investigators, Hearing Decisionmakers, Appellate Decisionmakers, Advisors, if applicable, and Informal Resolution Facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of complaints of sexual harassment. All materials used to train these administrators will be available on the College's Title IX website for inspection by members of the public in accordance with Title IX regulations.

Conflict of Interest

The Title IX Coordinator, Assistant Title IX Coordinator(s), Investigators, Decisionmakers, Appellate Decisionmakers, and Informal Resolution Facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Whether bias exists requires examination of the particular facts of a situation. A determination of bias must be based on an objective evaluation of the available facts (i.e., whether a reasonable person would believe bias exists).

Any person exercising investigative or decision-making authority under these Procedures who believes they may have a potential conflict of interest or bias that would prevent them from impartially exercising their authority, must disclose the potential conflict/bias to the Title IX Coordinator as soon as practicable after it is discovered. Arrangements will then be made to designate a conflict/bias free alternative in the case at issue.

If the Complainant or the Respondent believes the Title IX Coordinator has a conflict of interest or bias, such objection should be made to the President as soon as practicable after the potential conflict or bias is discovered. If the President determines that the objection is reasonable, the Title IX Coordinator will be replaced with a conflict/bias free Assistant Title IX Coordinator.

If the objection as to a conflict or bias is made with respect to an Investigator, such objection should be reported to the Title IX Coordinator as soon as practicable after the potential conflict or bias is discovered. If the Title IX Coordinator determines that the objection is reasonable, the Investigator will be replaced with a conflict/bias free alternative Investigator.

If the objection as to a conflict or bias is made with respect to a Hearing Decisionmaker or Appellate Decisionmaker, such objection must be reported to the Title IX Coordinator before the scheduled hearing or appeal decision. If the Title IX Coordinator determines that the objection is reasonable, the challenged person will be replaced with a conflict/bias free alternative Hearing Decisionmaker or Appellate Decisionmaker.

The decision of the Title IX Coordinator or President (in objections to the Title IX Coordinator), regarding an objection will be final.

Knowledge of or acquaintance with the Complainant, Respondent, or witnesses in a matter; awareness of a matter; participation as a consequence of one's official role in events surrounding a matter; and/or participation in the investigation process prior to the formal disciplinary process does not automatically result in the finding of a disqualifying conflict; however, such factors may be considered in determining whether a conflict exists.

The mere fact that a certain number of findings under these Procedures result in determinations of responsibility, or non-responsibility, does not necessarily indicate or imply bias on the part of Title IX personnel.

E. Definitions

Actual Knowledge: notice of sexual harassment allegations to the Title IX Coordinator or any Official with Authority, except that actual knowledge is not met when the only individual with actual knowledge is the Respondent

Business Day: any weekday not designated by the College as a holiday or administrative closure day. When calculating a time period of business days specified in these Procedures, the business day of the event that triggers a time period is excluded

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment

Confidential Employee: an individual identified by the institution who will not report any information about an incident to the Title IX Coordinator without the Complainant's permission.

Consent: must be informed, voluntary, and mutual and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether or not a

person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

Disciplinary Sanctions: consequences imposed on a Respondent following a determination under Title IX that the Respondent violated the College's prohibition on sexual harassment

Education Program or Activity: locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs; includes conduct that occurs on College property, during any College activity, or in any building owned or controlled by the College or by a student organization that is officially recognized by the College

Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the College investigate the allegation of sexual harassment

Incapacitation: An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, intoxication, or any other state where the individual is unaware that sexual contact is occurring or is otherwise unable to give informed and voluntarily consent. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact. Example: A person who is taking pain medication and falls asleep under the influence of the medication can be incapacitated and not be able to give consent to sexual contact.

Official with Authority: an individual who has the authority to institute corrective measures and is required to report sexual harassment to the Title IX Coordinator to initiate the College's response to the sexual harassment allegations. The College's Officials with Authority include the following positions at the College: Title IX Coordinator and Assistant Title IX Coordinator(s); President of the College, all Vice Presidents/Deans.

Party: a Complainant or Respondent

Relevant: related to the allegations of sexual harassment under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sexual harassment occurred, and evidence is relevant when it may aid a Hearing Decisionmaker or Appellate Decisionmaker in determining whether the alleged sexual harassment occurred

Remedies: measures designed to restore or preserve equal access to the College's education program or activity; remedies may include, but are not limited to, the same individualized services as supportive measures, however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent

Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

Responsible Reporting Official: any individual who is employed by the College and not deemed to be a Confidential Employee or Official with Authority. Responsible Reporting Officials are mandated by the College to report sexual harassment to the Title IX Coordinator promptly upon receiving a report of sexual harassment.

Retaliation: intimidation, threats, coercion, or discrimination, including 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 formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or these Procedures.

Nothing in this definition precludes a College from requiring an employee or other person authorized by a College to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

Student: a person who has gained admission

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Such measures are designed to restore or preserve equal access to the College's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

F. Prohibited Conduct

Under Title IX, Prohibited Conduct includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined below.

To the extent that federal or state laws addressing conduct that could be deemed Prohibited Conduct are created or amended, engaging in such conduct shall be considered a violation of these Procedures even if the definitions below have not been updated to reflect the most recent additions to or changes in law.

Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment);

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (hostile environment sexual harassment)

A severe, pervasive, and objectively offensive assessment includes, but is not limited to, a consideration of the following:

(i) the frequency of the offensive conduct;

(ii) the nature of the unwelcome sexual act or words, such as whether the harassment was physical, verbal or both;

(iii) Whether the harassment was an offensive utterance, and;

(iv) the number of victims involved and the relationship between the parties including, but not limited to, the ages of the harasser and the victim; and

In evaluating whether conduct is severe, pervasive, and objectively offensive, the College will look at the totality of the circumstances, expectations, and relationships.

(3) Sexual Assault, Dating Violence, Domestic Violence or Stalking as defined in these Procedures.

Sexual Assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system and the Summary Reporting System User Manual of the Federal Bureau of Investigation as used in the Clery Act

Sex Offenses— Any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent

- i. *Nonconsensual sexual intercourse (Rape)*— Penetration, regardless of how slight (or an attempt to commit the same), of the vagina or anus with any body part or object, or oral penetration by a sex organ of another individual, or by a sex-related object.

This definition covers cases where the Complainant cannot provide consent due to temporary or permanent mental or physical incapacity (including resulting from drugs or alcohol) or due to age. Physical resistance by the Complainant is not required to establish lack of consent.

- i. *Nonconsensual sexual contact (Fondling)*— The intentional touching (or an attempt to commit the same) of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent without the consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or

The intentional touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts, without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

This offense includes instances where the Complainant is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

- ii. *Incest*—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- iii. *Statutory Rape*—Sexual intercourse with a person who is under the statutory age of consent

Dating Violence: violence committed by a person—

- (i) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship,
 - The type of relationship,
 - The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Domestic Violence: felony or misdemeanor crimes of violence committed by a person who:

- Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of the College or a person similarly situated to a spouse of the Complainant,
- shares a child in common with the Complainant,
- is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- commits acts against a youth or young adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction

Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (i) fear for the person's safety or the safety of others; or
- (ii) suffer substantial emotional distress.

Course of Conduct means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Reasonable Person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial Emotional Distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

G. Reporting Procedures

A report of sexual harassment can be made to the persons below in person (during business hours) or by mail, telephone, or by email using the contact information below at any time, including during non-business hours. A report of sexual harassment can also be made by completing the online reporting form at

https://marionmilitary.my.salesforce-sites.com/inquiry/TargetX_Base_InquiryForm#?formId=a0BKa0000098g6CMAQ&formType=general&

- (1) Reporting to the Title IX Coordinator: Reports of sexual harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time: email, phone, online form, mail. Reports may be made to the Title IX Coordinator in person in the Administrative Building. After an incident of sexual harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.
- (2) Reporting to Officials with Authority: If Officials with Authority are notified of sexual harassment, they shall promptly report such sexual harassment to the Title IX Coordinator who will take immediate action under this Procedure. The College's Officials with Authority include the following positions at the College: Title IX Coordinator and Assistant Title IX Coordinator(s); President of the College, all Vice Presidents/Deans.
- (3) Reporting to Responsible Reporting Officials: MMI employees who are not Confidential Employees or Officials with Authority are mandated by the College to the report alleged sexual harassment to the Title IX Coordinator promptly upon receiving a report of sexual harassment.

(4) Reporting to Confidential Employees: Reports of sexual harassment made to Confidential Employees are considered confidential reports and will not be reported to the Title IX Coordinator without the Complainant's permission and will not constitute actual notice to the College. The College's Confidential Employees include the following positions at the College: School Nurse, Counselor, and Clergy.

(5) Anonymous Reporting: Anonymous reports may be made by telephone, in writing or electronically to the Title IX Coordinator. A decision to remain anonymous, however, may greatly limit the College's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Procedure.

(6) Reporting to Local Law Enforcement: Reports of sexual harassment may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from the College's investigations.

Mandatory Reporting under Alabama Law: Alabama law imposes a mandatory duty on all College employees to immediately report all incidences of known or suspected child abuse. Such reports must be made to the College's Safety & Security Department. The College also encourages students, volunteers, and representatives (as well as third-party vendors and their employees, representatives, or volunteers that contract for use of College facilities with responsibilities that involve interaction with children) to report (verbally and in writing) known or suspected child abuse to the College's Safety & Security Department. Sexual abuse is one element of the more comprehensive term "abuse" under Alabama law. For child protection purposes, a child is any person under 18 years of age or any individual under 19 years of age who is in need of protective services and does not qualify for adult protective services under Chapter 9 of Title 38 in Alabama Law. A freshman student, a "dual enrolled" high school student, or a summer camp participant, among others, may fall into the category of a "child."

Consolidation of Complaints

The College may consolidate complaints of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations of sexual harassment arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a party, Complainant, or Respondent include the plural, as applicable.

The College will not consolidate complaints if consolidation would violate the Family Educational Rights and Privacy Act (FERPA). Consolidation would not violate FERPA when the College obtains prior written consent from parties to the disclosure of their educational records.

Amnesty for Students

The College strongly encourages students to report incidents violating the policy related to discrimination, harassment, sexual harassment, and related inappropriate conduct. The College's primary concern is the safety of the members of the college community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the College reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting sexual harassment or other prohibited conduct or for students acting as a witness during the formal grievance procedures. The College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

H. Supportive Measures

Supportive measures may vary depending on what the College deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment. Complainants are eligible for supportive measures at the time their identity is known to the Title IX Coordinator. Respondents are eligible for supportive measures at the time that notice of an alleged complaint has been given.

Supportive measures cannot unreasonably burden either party and must be designed to protect the safety of the parties or the College's educational environment, or to provide support during the College's grievance procedures or during the informal resolution process. The College will not impose such measures for punitive or disciplinary reasons.

The College may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of the informal resolution process or the College may continue them beyond that point.

The College will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

If the party is a student with disabilities, The Title IX Coordinator may consult, as appropriate, with the individual or office that the College has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

I. Emergency Removals and Administrative Leave

The College may remove a Respondent from the College's education program or activity on an emergency basis, provided that the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health and safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator in writing within three (3) business days following the removal.

The College may place a non-student employee Respondent on administrative leave from employment responsibilities during the pendency of the College's grievance procedures.

Any challenges to an emergency removal should be sent to the Title IX Coordinator in writing within three (3) business days of the notification to the Respondent of the emergency removal. The Respondent should state the reasons for the challenge and any supporting documentation. The Title IX Coordinator will forward all documentation to the President to render a decision within five (5) business days. The President will notify both parties in writing of the decision.

J. Initial Evaluation & Complaint Dismissals

Initial Evaluation

When a report has been made, the Title IX Coordinator will contact the Complainant for an initial discussion to provide information of their rights and options, availability of supportive measures, consideration of the

Complainant's wishes with respect to supportive measures, explanation of the policy and grievance procedures and the process for filing a Formal Complaint.

During the initial discussion with the Complainant, the Title IX Coordinator will gather facts that will enable the Title IX Coordinator to evaluate the allegations and make a determination on whether to dismiss the complaint or investigate the complaint. A Formal Complaint must contain an allegation of sexual harassment against a Respondent, a request for the College to investigate the allegation, and be signed by the Complainant or the Title IX Coordinator. A Complainant may only file a formal complaint if the Complainant is participating or attempting to participate in the College's education program or activity.

In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. To make a fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

- (i) the Complainant's request not to proceed with initiation of a complaint;
- (ii) the Complainant's reasonable safety concerns regarding initiation of a complaint;
- (iii) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (iv) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (v) The age and relationship of the parties, including whether the Respondent is an employee of the College;
- (vi) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (vii) The availability of evidence to assist in a Decisionmaker in determining whether sex discrimination occurred; and
- (viii) Whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

Mandatory Complaint Dismissals

The Title IX Coordinator will dismiss a Formal Complaint for purposes of sexual harassment if:

- (1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in these Procedures, even if proved;
- (2) The conduct alleged did not occur in the College's education program or activity; or
- (3) The conduct alleged in the Formal Complaint did not occur against a person in the United States.

Permissive Complaint Dismissals

The Title IX Coordinator may dismiss a Formal Complaint or any allegation within the Formal Complaint, 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 in the Formal Complaint;
- (2) The Respondent is no longer enrolled in the College; or
- (3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.

Upon dismissal, the Title IX Coordinator will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the Title IX Coordinator will notify the parties simultaneously in writing.

The Title IX Coordinator will notify the Complainant that a dismissal may be appealed on the bases outlined in Section M of these Procedures. If dismissal occurs after the Respondent has been notified of the allegations, then the Title IX Coordinator will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the College will follow the procedures outlined in Section M of these Procedures.

When a complaint is dismissed, the College will, at a minimum:

- (1) Offer supportive measures to the Complainant as appropriate;
- (2) If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- (3) Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sexual harassment does not continue or recur within the College's education program or activity.

K. Complaint Investigation

The College will treat Complainants and Respondents equitably.

The College presumes that the Respondent is not responsible for the alleged sex-based harassment until a determination is made at the conclusion of its grievance procedures.

It is the goal of the College to complete investigations in a prompt timeframe. Any timeframes or deadlines may be extended when necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of parties and/or witnesses, account for College breaks or vacations, and the complexity of the investigation or severity and extent of the alleged conduct. The Title IX Coordinator will notify both parties in writing of any College delays.

If a Complainant or Respondent shall request a delay in the investigation or extension of any timeframes, the party must notify the Title IX Coordinator in writing as soon as practicable stating the requested new timeframe and reason for the delay or extension. The Title IX Coordinator will notify the party in writing of the denial or both parties in writing of the approval within three (3) business days of notification of the request. Any delays or extension will apply equally to both parties.

All requests will be on a case-by-case basis for good cause.

Parties have the opportunity to be accompanied to any meeting or proceeding by one (1) Advisor of their choice, who may be, but is not required to be, an attorney.

- The College will not limit the choice or presence of the Advisor for the Complainant or Respondent in any meeting or proceeding. Both parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. However, the College has the right to remove any Advisor who does not adhere to the College's policies and procedures.
- The College cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney to advise that party.
- If a party requests that all communication be made through their attorney Advisor instead of to the party, the College will agree to copy both the party and their Advisor on all communications.
- Advisors should help the parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak for the party unless given specific permission to do so.
- The parties are expected to ask and respond to questions on their own behalf throughout the grievance process. Although the Advisor generally may not speak for the party, the Advisor may consult with the party, either privately as needed, or by conferring or passing notes during any meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Parties have the opportunity to have one (1) support person of their choice, a person other than the Advisor, present during any meeting or proceeding.

Written Notice of Allegations

Upon receipt of a Formal Complaint, the Title IX Coordinator will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:

- (1) Notice of the party's rights and options
- (2) Notice of the College's grievance process
- (3) Notice of the College's informal resolution process and options
- (4) Notice of the allegations of sexual harassment including: the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the incident, if known
- (5) Notice that the Respondent is presumed not responsible of the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- (6) Notice that the parties may have an Advisor of their choice, who may be, but is not required to be an attorney, and that the Advisor may inspect and review evidence
- (7) Notice of the College's Student Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

If, in the course of an investigation, the College decides to investigate additional allegations of sexual harassment by the Respondent toward the Complainant that are not included in the written notice or that are included in a

consolidated complaint, the Title IX Coordinator will provide written notice of the additional allegations to the parties.

Investigation

The College will conduct an investigation following a Formal Complaint and Notice of Allegations. The Title IX Coordinator will assign an Investigator(s) to conduct the investigation. During all meetings and interviews the parties may be accompanied by an Advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the Advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent during the investigation phase of the grievance process.

Each party will be provided an equal opportunity to provide information to the Investigator and present witnesses for the Investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the College does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their Advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the Investigator. The Investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the Investigator will create an investigative report that fairly summarizes relevant evidence obtained during the investigation.

At least ten (10) business days prior to a hearing, the Investigator will provide each party and the party's Advisor (if any) an electronic copy of the investigative report that includes the parties review and written response, if any.

L. Hearing

After the investigation, the College will provide for a live hearing for all Formal Complaints of sexual harassment that have not been dismissed or resolved by informal resolution. At the request of either party, or at the discretion of the Title IX Coordinator, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Decisionmaker and parties to simultaneously see and hear the other party or witness answering questions.

The Hearing Decisionmaker(s) will be appointed by the College and will not be the Title IX Coordinator or Investigator. The Hearing Decisionmaker(s) will be trained, impartial, and without a conflict of interest. The Hearing Decisionmaker(s) may be a panel of three (3) College employees with one panel member serving as a chairperson, or a single Hearing Decisionmaker or an external individual designated by the College.

Either party may challenge the appointment of a Hearing Decisionmaker, based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than five (5) business days prior to the scheduled hearing.

The College will create an audio or audiovisual recording of all live hearings and make the recording available to the parties for inspection or review.

The Hearing Decisionmaker will serve as the hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the hearing; distributing materials; etc. The Hearing Decisionmaker may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

Participants at the hearing include the Hearing Decisionmaker(s) serving as the hearing facilitator, the Title IX Coordinator, the Investigator(s) who conducted the investigation, the parties, advisors to the parties, witnesses and anyone providing authorized accommodations. Any witnesses scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have provided a written statement or answered questions from the Investigator in writing.

Advisor's Role at the Hearing

Each party must have an Advisor present at the hearing. The Advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the Hearing Decisionmaker(s). Failure to follow the rules of decorum by an Advisor may result in removal of an Advisor from the hearing. If a party does not have an Advisor present at the live hearing, the College will appoint the party with an Advisor without fee or charge.

Pre-Hearing Conference

The Hearing Decisionmaker(s) may hold a pre-hearing conference. In order to streamline the hearing process, the Hearing Decisionmaker(s) may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference. During the pre-hearing conference, parties and their advisors will be asked to submit, in writing, any questions they wish to ask during the live hearing so that the Hearing Decisionmaker(s) can be prepared to respond to relevancy at the hearing. The Hearing Decisionmaker(s) may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.

This conference does not preclude an Advisor from asking additional questions live during the hearing.

At the pre-hearing conference, the Hearing Decisionmaker(s) may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

Hearing Process

The hearing process will proceed as follows:

- (1) Notice of Hearing: After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties and their advisors (if any) will be provided with a Notice of the Hearing. The Notice will include the date, time, location, name of the Hearing Decisionmaker(s), names of all participants in the hearing, and the location (virtual or in person) of the hearing.
- (2) Opening Statement: Each party will have the opportunity to present an opening statement, no more than five (5) minutes, to the Hearing Decisionmaker(s).
- (3) Review of Hearing Procedures, Formal Complaint, and Notice of Allegations by Hearing Decisionmaker(s).
- (4) Questioning of Parties and Witnesses: The College will provide a process that enables the Hearing Decisionmaker(s) to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sexual harassment.

The Hearing Decisionmaker(s) will ask initial questions of the participants at the hearing.

After the Hearing Decisionmaker(s) asks questions of a participant, each party's Advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The questioning of participants by Advisors will be conducted in the following manner:

- (i) a question is asked by an Advisor
- (ii) Before the participant answers the question, the Hearing Decisionmaker(s) determines whether the question is relevant
- (iii) If the question is determined to be relevant by the Hearing Decisionmaker(s) the participant answers the question
- (iv) If the question is determined not to be relevant by the Hearing Decisionmaker(s), the Hearing Decisionmaker(s) must explain the decision to exclude a question as not relevant.

Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Hearing Decisionmaker(s) will give a party an opportunity to clarify or revise a question that the Hearing Decisionmaker(s) determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked by party's Advisor.

Evidence and Questions Excluded

Sexual Predisposition or Prior Sexual Behavior of the Complainant: Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

Privileged Information: No person will be required to disclose information protected under a legally recognized privilege. The Hearing Decisionmaker(s) must not allow into evidence or rely upon any questions or evidence that

may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.

Medical Records: Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within these Procedures.

The Hearing Decisionmaker(s) may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The Hearing Decisionmaker(s), however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

(5) **Closing Statements:** Each party will have the opportunity to present a closing statement, no more than five (5) minutes, to the Hearing Decisionmaker(s).

Determination Whether Sexual Harassment Occurred

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the Hearing Decisionmaker(s) will deliberate in private and will:

- (1) Use the preponderance of the evidence standard of proof to determine whether sexual harassment occurred. This means that the Hearing Decisionmaker(s) will decide whether it is more likely than not based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s). The standard of proof requires the Hearing Decisionmaker(s) to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the Hearing Decisionmaker(s) is not persuaded under the applicable standard by the evidence that sexual harassment occurred, whatever the quantity of the evidence is, the Hearing Decisionmaker(s) will not determine that sexual harassment occurred.
- (2) Notify the parties simultaneously in writing of the determination whether sexual harassment occurred under Title IX including:
 - Identification of the allegations potentially constituting sexual harassment;
 - A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the Procedure to the facts;
 - A statement of, and rationale for, the result of each allegation, including a determination regarding responsibility, any disciplinary sanctions that the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant; and
 - The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Decisionmaker(s) will send the written notification of hearing outcome to both parties within fourteen (14) business days of the conclusion of the hearing.

The College will not impose disciplinary sanctions on a Respondent for sexual harassment prohibited by Title IX unless there is a determination at the conclusion of the Title IX grievance procedures that the Respondent engaged in prohibited sexual harassment.

If there is a determination that sexual harassment occurred, as appropriate, the Title IX Coordinator will:

- Coordinate the provision and implementation of remedies to a Complainant and other people the College identifies as having had equal access to the College's education program or activity limited or denied by sexual harassment;
- Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that sexual harassment does not continue or recur within the College's education program or activity.

The College shall not discipline a party, witness, or others participating in the Title IX grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sexual harassment occurred.

Sanctions

Factors considered by the Hearing Decisionmaker(s) when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- 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
- The impact on the parties
- Any other information deemed relevant by the Hearing Decisionmaker(s)

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

Student Sanctions

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

- Reprimand
- Required Counseling
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Reduction in Rank
- Penalty Hours

- Restriction to Campus
- Other Actions: In addition to, or in place of, the above sanctions, the College may assign any other sanctions as deemed appropriate.

Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in sex-based harassment include:

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Shift or schedule adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

M. Appeals

The College will offer an appeal from a dismissal of a Formal Complaint or determination whether sexual harassment occurred on the following bases:

- (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;
- (3) The Title IX Coordinator, Investigator, or Hearing Decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- (4) Sanctions were disproportionate to the policy violation(s).

If either party wishes to appeal a dismissal of a Formal Complaint or determination whether sexual harassment occurred, the party must submit an appeal in writing to the Title IX Coordinator within three (3) business days of receiving written notification of the hearing determination. The party requesting the appeal should state the basis for the appeal and any supporting documentation.

If a party appeals a dismissal of a Formal Complaint or determination whether sexual harassment occurred, the Title IX Coordinator will:

- Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the Appellate Decisionmaker for the appeal is not the same person as the Hearing Decisionmaker(s) that reached the determination regarding responsibility or dismissal of the Formal Complaint, the Investigator or the Title IX Coordinator;
- Ensure that the Appellate Decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the non-appealing party with five (5) business days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination whether sexual harassment occurred or dismissal of the Formal Complaint;

The written determination on responsibility and sanctions, if applicable, are postponed until the decision on the appeal is sent to the parties. Supportive measures will remain in place during the appeal period.

The Appellate Decisionmaker will issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following: (1) affirm the determination of the Hearing Decisionmaker(s) and affirm the disciplinary sanctions and remedies, if applicable (2) affirm the determination of the Hearing Decisionmaker(s) regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable (3) remand the process back to the hearing stage for the Hearing Decisionmaker(s) to remedy any procedural irregularity or consider any new evidence (4) reverse the Hearing Decisionmaker(s)' determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable or (5) affirm or amend the sanctions and/or remedies outlined in the determination

The Appellate Decisionmaker will notify both parties in writing of their decision within fourteen (14) business days of receipt of the appeal.

The determination regarding responsibility becomes final on the date that the College provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

At the conclusion of the appeals process, employee Respondents will receive all rights, if applicable and if any, which are granted by either their contract or the Alabama Students First Act in the event any disciplinary sanction is proposed.

N. Informal Resolution

In lieu of resolving a complaint through the College's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. Informal resolution does not involve an investigation, adjudication hearing, or disciplinary action against a Respondent and is not appropriate for all forms of conduct under these

Procedures. Informal resolution is not an option for sexual harassment incidents involving a student Complainant and an employee Respondent. Both parties must voluntarily agree in writing to participate in the informal resolution process.

The Title IX Coordinator will inform the parties in writing of the informal resolution process it offers. The College will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law. Before the initiation of an informal resolution process, the Title IX Coordinator will explain in writing to the parties:

- The allegations;
- The requirements of the informal resolution process;
- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the College will maintain and whether and how the College could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

Informal resolution will be facilitated by Informal Resolution Facilitators. The time frame for completion of informal resolution may vary, but the College will seek to complete the process within a prompt timeframe.

The College retains the discretion to determine which cases are appropriate for informal resolution. The College may gather information necessary through interviewing individuals and other evidence gathering to determine if the case is appropriate for informal resolution. Factors the College will consider when determining whether a report of Prohibited Conduct is suitable for informal resolution include, but are not limited to, the following:

- The nature of the alleged offense;
- The dynamics of power or control commonly associated with the alleged offense and/or with the parties involved;
- The Respondent's prior known conduct;
- Whether there would be a continuing safety threat to the campus community after resolution of the specific report of Prohibited Conduct;
- Whether multiple parties are involved;
- Whether the resolution proposed is designed to eliminate, prevent, and address the reported Prohibited Conduct; and
- Any other factor deemed relevant by the Title IX Coordinator in the interest of overall campus safety or safety of the parties involved.

Informal resolution may result in the following remedies: establishing supportive measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions; and any other remedy that can be tailored to the involved individuals to achieve the goals of these Procedures.

Informal resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for misconduct and acknowledge harm to the Complainant or to the College community. Informal resolution may also include mediation.

Participation in informal resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation at any time, including if informal resolution is unsuccessful at resolving the report. Similarly, a Complainant may request to end an investigation and pursue informal resolution at any time if the Respondent also consents to informal resolution. In addition, either party may request supportive measures regardless of whether any particular course of action is sought.

The College may also decide to proceed with a formal investigation and withdraw its approval for the informal resolution at any time during the process. If additional potential policy violations are revealed during the informal resolution process, the College may withdraw its approval for the process and proceed with a formal investigation or the College, with the consent of the parties, may continue the informal resolution process and resolve the additional potential policy violations.

Information disclosed by any party during the informal resolution process will not be considered during a subsequent investigation or adjudication hearing.

Because the outcome of informal resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.

O. Confidentiality and Privacy

The College will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses.

P. Retaliation

Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Procedures 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 these Procedures.

Alleged acts of Retaliation will be referred to the Title IX Coordinator and may be investigated and resolved under the respective Student Code of Conduct or Employee Policy.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.

Charging an individual with a Student Code of Conduct/Employee Policy violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute Retaliation prohibited under these Procedures.

Q. Freedom of Speech and Academic Freedom

Freedom of speech and principles of academic freedom are central to the mission of the College. Constitutionally protected expression cannot be considered sexual harassment under these Procedures. To establish a violation of Title IX, the harassment must be subjectively and objectively offensive and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity.

R. Records Retention

The College will maintain all of the documentation related to reports of sex discrimination and sexual harassment, the grievance process, and information resolution process for seven (7) years in accordance with state and federal records laws and requirements. The documentation of all records is private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under the Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws and included in the employee's official employment record.