

Sexual Misconduct and Other Unlawful Discrimination and Harassment Protocol

I. Protocol

A. Protocol: This protocol is intended to work in concert with the *Agnes Scott College Title IX Sexual Misconduct Policy*. Agnes Scott College is committed to maintaining an environment in which all members of the community, staff, students, faculty, and visitors, are treated with respect and dignity. It is the policy of the college not to discriminate on the basis of sex or gender in any of its programs, activities, or employment practices. Agnes Scott College prohibits sexual misconduct and harassment in any form by any member of the Agnes Scott College community and by visitors to the campus, including guests, patrons, independent contractors, or clients of the college, and by those participating in off-campus college programs, such as study abroad programs, internships, student teaching, and experiential learning. Pursuant to the related *Agnes Scott Title IX Sexual Misconduct Policy* and this protocol, the College prohibits and will act to prevent, address, and eliminate all forms of gender-based and sexual discrimination, harassment, violence and bullying.¹

Sexual discrimination and harassment, including all forms of sexual violence, is prohibited by Title VII of the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972. Conduct that might not be held to violate these statutes may nonetheless be considered sexual discrimination and harassment under college policies and the college condemns and prohibits conduct that is sexually discriminatory or harassing even if such conduct would not be adjudged illegal.

Applicability: This protocol applies to all employees including faculty.

B. Definitions: All definitions contained in the *Agnes Scott Title IX Sexual Misconduct Policy* apply to this protocol.

C. Academic freedom respected: The College is committed to academic freedom as stated in Section III of the Faculty Handbook, Statement on Academic Freedom and Responsibility, and complaints will be evaluated consistently with this policy. The College's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or

¹ Hereinafter, this protocol will refer to sexual misconduct to include all harassment, discrimination, bullying and violence based upon gender, gender identity, sex and sexual orientation. Sexual Misconduct is defined by the *Agnes Scott Title IX Sexual Misconduct Policy* as encompassing sexual harassment, non-consensual sexual contact (or attempts at such contact); non-consensual sexual intercourse (or attempts at such intercourse), and sexual exploitation. All gender-based discrimination, harassment and violence prohibited by Title IX is defined as sexual misconduct under this policy. Examples of specific crimes that constitute sexual misconduct pursuant to this policy include rape, sexual assault, domestic, dating or intimate partner violence, bullying and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by persons of any gender or sex, and it can occur between people of the same or different sex.

discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of germane academic material. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern. Material germane to a course may sometimes offend or disturb; however, intimidation and harassment are inconsistent with the maintenance of academic freedom on campus and violate the ethical and professional responsibilities of faculty members to avoid any exploitation of students for private advantage.

D. Advisors. The Complainant and Respondent may each be assisted by an advisor of choice during any investigative meeting, pre-hearing conference and/or at any time following the filing of a complaint. The advisor may be a mentor, family member, friend, attorney or any other supporter so long as they are not in any way involved in the resolution process, such as serving as a witness. The role of the advisor is to serve as a support for the Complainant or Respondent and not to serve as a representative or advocate in interactions with College officials. 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 one.

All advisors are subject to the same campus rules, whether they are attorneys or not. An advisor may not make a presentation or represent the Complainant or the Respondent during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process.

II. Procedures

A. Direct resolution: Except in cases of sexual violence, anyone experiencing or observing sexual harassment is encouraged to explain clearly to the alleged offender that the behavior is objectionable and request that it cease. If such an objection does not seem safe or efficacious, or if after the objection is raised the conduct does not cease, the person experiencing or observing the offending conduct should promptly report the complaint to the Title IX Coordinator or Associate Vice President for Human Resources, either directly or through their relevant reporting structure.

B. Initiation of a report or complaint

1. **Timeliness of Reporting:** Reports and complaints of sexual misconduct should be initiated as soon as possible after the incident(s) occurs in order to aid effective investigation. All reports and complaints will be promptly investigated and appropriate action will be taken to remedy the problem as expeditiously as possible.

2. **Non-retaliation:** The College will take action to protect anyone who submits a report ("Reporter") or complaint ("Complainant") from retaliation in any form. Anyone who knowingly

makes false accusations will be subject to appropriate disciplinary action consistent with College policies and procedures.

3. Confidentiality: The College will respect the privacy of Reporters and Complainants, of persons against whom the complaint is made ("Respondents"), and of witnesses in a manner consistent with the College's duty to investigate, to end and prevent further sexual misconduct, to take appropriate remedial actions, and to comply with any discovery or disclosure obligations required by law.

4. Institutional due process: The College will make every reasonable effort to protect the rights of both Complainants and Respondents. The *Agnes Scott College Title IX Sexual Misconduct Policy* and this protocol operate independently (but cooperatively as required) of the criminal justice system.

Once a report of sexual misconduct by a faculty member or employee is received by Agnes Scott College, the Title IX Coordinator (or designee) will follow the pre-proceeding common procedures of the *Agnes Scott College Title IX Sexual Misconduct Policy*. The pre-proceeding common procedures include the initial inquiry and investigation.

C. Investigation and Adjudication

The College's Initial Inquiry and Investigation is handled in all cases pursuant to the governing *Agnes Scott College Title IX Sexual Misconduct Policy*. Following the Title IX Coordinator's (or designee's) handling of the pre-proceeding common procedures, the following may occur:

Informal resolution. In cases other than those involving sexual violence, informal resolution by consent is available to the parties. Informal resolution may be recommended by the Title IX Coordinator, or: Associate Vice President for Human Resources ("AVP for HR"), Vice President for Academic Affairs ("VPAA") or any College officer in consultation with the Title IX Coordinator. After discussing the report of sexual misconduct with the Complainant or Reporter, if the Title IX Coordinator, AVP for HR, VPAA or College officer believes that the situation might be best resolved informally, or that the conduct does not rise to the requisite level of severity or pervasiveness or for any reason does not violate the college's policy against sexual misconduct, or that the complaint rests on misperceptions or miscommunication, the Title IX Coordinator, AVP for HR, VPAA or College officer may attempt an informal resolution of the complaint. This attempt at informal resolution may include further fact-finding, consultation with involved parties, including the Respondent, mediation attempts with a trained mediator, or other reasonable means to resolve the situation or remedy the conduct informally. If informal resolution is attempted, however, the identity of the Complainant or Reporter may be kept confidential, unless the Complainant or Reporter gives permission to divulge their identity, and no resolution will be imposed that is not agreed to by all parties involved. An acceptance of responsibility by the Respondent may occur at any time following a report of sexual misconduct and the Respondent should follow the Acceptance of Responsibility procedures defined herein.

Informal investigations and resolution attempts may be terminated at any time by any party by clearly indicating verbally or in writing that they wish to end the informal resolution and initiate

formal proceedings. In any event, the informal resolution process must be concluded within one month of the initial inquiry meeting, unless extended by consent of the Complainant and the Respondent. Information and accusations contained in reports or gathered in the process of informal investigations shall be kept in a confidential file in the Office of Human Resources. Information about an individual in this file may be accessed for the purpose of the subsequent formal proceedings and investigating future reports of sexual harassment, but may not be used as the sole basis for making personnel decisions. Likewise, records of informal resolutions shall be kept in a confidential file in the Office of Human Resources and may not be used as the sole basis for future personnel decisions. Cases of sexual violence are not to be resolved by informal resolution or mediation.

Any person who believes they have experienced sexual misconduct may decline informal resolution and request that the College proceed with formal institutional proceedings.

Acceptance of Responsibility. Within five (5) days after receipt of the Notice of Investigation from the Title IX Coordinator (or designee) or the AVP for HR, the Respondent has an opportunity to accept or not accept responsibility for the violations alleged in the complaint. The Respondent must inform Title IX Coordinator of their decision in writing within those five (5) days. If the Respondent accepts responsibility the policy violation, the Title IX Coordinator, in consultation with College officers designated to serve on the Investigation Board, will determine the appropriate sanction, in conformance with this protocol, within five (5) days and send written notification of the sanction imposed to the Complainant and Respondent. Except in cases of a faculty dismissal recommendation, the Title IX Coordinator's determination shall be final and not appealable. Any faculty dismissal sanction is a recommendation only and triggers the procedures for dismissal for cause under Dismissal of Teaching Faculty Policies and Procedures (Faculty Handbook).

If the Respondent has not already accepted responsibility or a resolution, within two (2) business days after receipt of the Final Investigative Report (as explained below), the Respondent has an additional opportunity to accept or not accept responsibility, as well as the findings and sanctions. The Respondent must inform the Title IX Coordinator of their decision in writing within those two business (2) days. This is the same time period within which the parties may object to the Final Investigative Report. If a Respondent accepts responsibility and the Final Investigative Report, the complaint(s) will be resolved pursuant to that document and the investigation will be closed. If the Respondent accepts responsibility for the violations but objects to the sanctions, the sanction determination alone, other than dismissal, is appealable to the President of the College within two (2) business days from receipt of the report. The President will decide upon the sanctions and notify the Respondent within five (5) business days of the sanction appeal. The sanction determination of the President shall be final and not appealable.

Initiation of Formal Proceedings. At any point during the process of informal resolution (or before) any person believing to have experienced sexual misconduct may initiate a formal process of investigation and resolution. Such a request by the Complainant will be deemed as consent to proceed with institutional proceedings to include disclosure of the Complainant identity to the Respondent. The Title IX Coordinator, AVP for HR, VPAA or any College

officer may also initiate formal procedures to investigate and resolve conduct suspected of constituting sexual misconduct on the basis of sufficient credible evidence. Past reports of sexual misconduct alone do not constitute sufficient credible evidence; the Title IX Coordinator, AVP for HR, VPAA or College officer must have evidence about current conduct to file a complaint. If the Title IX Coordinator, AVP for HR, VPAA or College officer initiates the process of investigation and resolution, they must also put in writing the complaint and explanation of the sufficient credible evidence that warrants the initiation of the investigation and resolution process. While past reports of sexual misconduct alone do not constitute sufficient credible evidence to commence a formal investigation, if it is determined that past reports were made in good faith, the College may consider such good faith reports to satisfy its obligation to identify potential sexual misconduct patterns.

The institution of formal proceedings and notice thereof (“Notice of Investigation”) is further governed by the *Agnes Scott College Title IX Sexual Misconduct Policy*.

Investigation of the complaint

The investigation of the complaint is governed by the *Agnes Scott College Title IX Sexual Misconduct Policy*.

At the conclusion of the investigation:

- 1) The College will provide an Initial Report of Factual Findings (“Initial Report”) to the Complainant(s) and Respondent. This is a confidential document. The parties should not discuss or disclose the contents of this Initial Report with others on campus, with the exception of their advisors.
- 2) Each party will have two (2) business days to conduct a review of the Initial Report, and to provide a written response. The Complainant(s) and the Respondent shall have an opportunity through a written response to address the facts set forth in the Initial Report to point out anything they contend to be inaccurate. A written response is not mandatory.

The first business day of this two-day review period will be the business day following the day the Initial Report is electronically provided to the parties. (Saturday, Sunday and holidays observed by the College are not business days. Thus, if the Initial Report is sent to the parties by e-mail on a Friday, responses to the report will be due at 5:00 p.m. on the following Tuesday.)

- 3) Should either party submit a written response to the Initial Report, the investigators will review and consider the written response within two (2) business days.
- 4) After considering any written response from the parties, the College will have five (5) business days to provide a written Final Investigative Report to the Complainant and the Respondent. This is a confidential document. The parties should not discuss or disclose the contents of this Final Investigative Report with others on campus, with the exception of their advisors.

The **preponderance of the evidence standard** will be used by the College and/or investigators in the Final Investigative Report.

The Final Investigative Report will set forth (a) the investigator's findings and conclusions, (b) recommended sanctions, if any, to be taken against the Respondent as a result of the complaint(s), and (c) other measures, if any, to prevent recurrence of any sexual misconduct against the Complainant or others.

5) The parties shall have two (2) business days after receiving the Final Investigative Report to submit a written objection to its conclusions and recommended action, if any, against the Respondent.

6) If neither party objects to the conclusions and recommended action as set forth in the Final Investigative Report, the complaint(s) will be resolved pursuant to that document and the investigation will be closed. There will be no appeal rights if the matter is resolved at this stage.

(7) If an objection is submitted by either party, the matter will be sent to the Agnes Scott College Investigation Board if the Respondent is a faculty member or employee. If the Respondent is a student, the matter will be sent to the Title IX/Conduct Hearing Panel.

- Each party will receive a timely notice of the objection informing them that the Investigation Board or Hearing Panel will be convened as soon as practicable.

Composition of the Agnes Scott College Investigation Board. The Board shall be comprised of the officer who supervises the person named as the Respondent, the AVP for HR, the chair of the Faculty Executive Committee and one additional member chosen from the Respondent's constituency (if a faculty Respondent, a second faculty member to be named by the Faculty Executive Committee; if a staff Respondent, a second staff member to be named by the Staff Council) The officer shall serve as Chair of the investigation board.

(1) Hearing. The Investigation Board shall conduct a thorough, fair, and expeditious hearing based on all the evidence collected throughout the investigative process resulting in the Final Investigative Report. The hearing generally is closed and typically includes only the Complainant (if they elect to attend), Respondent, key material third parties (only in atypical cases where board deems it necessary beyond the information contained in the Final Investigative Report). Both parties will be given the opportunity to address the Final Investigative Report with the board. Beyond this opportunity, the manner in which the hearing is conducted and the information considered solely is within the discretion of the board. The participants may appear sequentially and the Complainant may not be required to appear at the same time as the Respondent, or at all. Neither party may directly question the other but each may submit questions to the board for consideration.

At its discretion, the board may seek further written evidence and interview witnesses who, in the opinion of the board, can shed light on the merits of the complaint(s) and the conduct of the Respondent. The parties shall have the right to suggest any additional witnesses/interviews and

additional information to the investigation board that in their opinion can provide valid and relevant evidence not previously presented. The parties may also suggest questions to any witnesses, but questioning shall be done solely by the chair of the investigation board, whose judgment about the appropriateness and wording of questions, after consultation with other board members they deem necessary, shall be final. The board shall retain the authority to consider any and all information in the determination of responsibility and in the imposition of sanctions.

If there is a determination of responsibility, the Complainant(s) may provide to the board a written impact statement prior to the issuance of sanctions. The impact statement will only be permitted during the sanctioning phase following the determination of responsibility. An impact statement is not required but encouraged by the College.

The preponderance of the evidence standard will be used by the Investigation Board.

Notice of Outcome. Within five (5) business days of the conclusion of the hearing, the College will inform the parties of the Investigation Board's decision by electronic transmission of a Notice of Outcome.

The Notice of Outcome to the Respondent will identify (a) the Investigation Board's findings and conclusions, (b) the recommended sanctions, if any, to be taken against the Respondent as a result of the complaint, (c) other measures, if any, to prevent recurrence of any misconduct against the Complainant or others, (d) the opportunity to accept responsibility within two (2) business days, and (e) appeal procedures. The Notice of Outcome to the Respondent will not identify remedial measures or accommodation solely relevant to the Complainant(s).

The Notice of Outcome to the Complainant will identify (a) sanctions or measures, if any, relevant to the Complainant, and (b) appeal procedures. If the Respondent is found responsible for sexual violence, the Notice of Outcome to the Complainant will additionally include all sanctions.

Conflict of interest. If any member of the investigation board is a party to the complaint or has any other conflict of interest that would prevent them from adjudicating the complaint in a fair and impartial manner, the President of the College will decide the existence of such a conflict and designate a substitute of similar status to serve on the investigation board. If for any reason it is not appropriate or possible for the President to do so, the chair of the board of trustees will designate a substitute.

D. Appeal Rights

The parties may appeal the Notice of Outcome by submitting a written notice within two (2) business days of its receipt. The first business day of this two-day review period will be the business day following the day the Initial Report is electronically provided to the parties.

All protective measures or accommodations imposed or maintained by the Investigation Board will be in effect during the appeal process.

An appeal may be based on one of the following grounds:

- a) The existence of new facts that (i) were not available throughout the investigation process, and (ii) may have materially affected the Investigation Board's decision if they had been available at the time of the investigation;
- b) Evidence that procedures set forth here (i) were not followed, and (ii) that the failure to follow these procedures may have materially affected the Investigation Board's decision;
- c) That the sanction imposed was outside the range of sanctions authorized by the *Agnes Scott College Sexual Misconduct Policy*; and/or
- d) That legal rights as provided to a party by Title IX or other applicable law were violated.

No other issues may be included within an appeal.

The appeal must be timely received in-person or electronically by the Title IX Coordinator, Marti Fessenden, at mfessenden@agnesscott.edu or in their office located in Hopkins Hall.

- The Title IX Coordinator will then review the written appeal to determine its timeliness and whether it raises one of the permissible grounds for appeal as set forth above.
- If the Title IX Coordinator determines that the appeal is untimely or that it has not raised a permissible grounds for appeal as set forth above, the appeal will be rejected and the Notice of Outcome from the proceeding will be rendered final.
- If the appeal is timely and it has raised a permissible grounds for appeal, the President of Agnes Scott College shall review the appeal (to include the Final Investigative Report, Notice of Outcome and sanctions to be imposed), and, may review any documents or statements presented throughout the investigation and adjudication process.
- The President may accept, reject, or modify the finding and/or sanctions based upon one or more of the permissible grounds for appeal.
- The President or her designee will communicate her decision, in writing, to the Title IX Coordinator, who will forward the decision to the Respondent and the Complainant.
- The appeal decision shall be final.

If a student Respondent appeals, the appeal will be to the Vice President for Student Life or their designee and will be governed by the *Agnes Scott College Title IX Sexual Misconduct Policy*.

E. Sanctions and Protective Measures

Interim measures during the course of investigation. At any point after the filing of a written complaint, the President of the College may place the respondent on administrative leave with pay or suspend the respondent without pay. Summary suspension shall be imposed only when, in

the judgment of the President, the respondent's presence on campus would constitute a threat to the safety and well-being of members of the campus community. Before implementing the suspension, the Respondent shall be given written notice of the intention to impose the suspension and shall be given an opportunity to present oral and written arguments against the imposition of the suspension. If the Respondent is suspended, the formal process should be completed within the shortest reasonable time possible, not to exceed ten working days. During the suspension, the Respondent may not enter campus without obtaining prior permission from an officer of the college.

Other interim measures may include supervisor notification, adjustment of reporting structure and any reasonable steps to end, prevent recurrence and remedy the impact of any sexual misconduct. All sanctions and remedial actions identified below are available to the College as an interim measure. Interim measures may also become permanent accommodations following the conclusion of the formal proceedings.

Imposition of remedial actions, protective measures or sanctions. The College may impose the following actions, measures or sanctions on an interim or permanent basis:

- Verbal or written warning. In the discretion of the College, the warning will be noted in the employment record of the Respondent.
- No contact letter
- Providing an escort
- Adjustment of work schedule
- Supervisor notification
- Adjustment of supervisory or reporting structure
- Referral to or provision of counseling (EAP, etc.)
- Referral to police and/or community services
- Sensitivity training and educational programming
- Paid leave
- Unpaid leave
- Suspension or denial of use of the College services and facilities
- Dismissal from employment (for dismissal of faculty, see below)
- Any of the sanctions and/or protective measures listed for students in the governing Agnes Scott College Title IX Sexual Misconduct Policy

Failure to timely and fully comply with sanctions or remedial actions may constitute a separate violation of the Sexual Misconduct Policy or this protocol.

Suspension or dismissal of faculty. The College's decision to suspend or terminate a full-time faculty member holding a continuous appointment or a probationary or term contract before its expiration is a recommendation only and triggers the procedures for dismissal for cause under Dismissal of Teaching Faculty Policies and Procedures (Faculty Handbook).

F. Resolution Time Frame. Within 60 days of notice to the College of potential sexual misconduct, unless the Respondent has been suspended (see preceding paragraph), the time period is extended by the consent of the Complainant and the Respondent or extenuating

circumstances, the investigation board shall make appropriate and well-grounded findings regarding the factual basis of the complaint. (Notice of Outcome)

G. Documentation. The AVP for HR is responsible for keeping a record of the entire formal complaint process, including all complaints, answers, written evidence, notes from hearings, other documentary evidence from the investigation and appeals processes, and documentation of remedial actions taken and any evidence concerning their effectiveness. This record shall be maintained in a confidential file in the Office of Human Resources, and shall be available to managers and RPT committees for use as appropriate in making personnel decisions.

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