

# THE CONCORDIA UNIVERSITY POLICY AND PROCEDURE FOR CIVIL RIGHTS EQUITY GRIEVANCE RESOLUTION FOR ALL FACULTY, STUDENTS AND EMPLOYEES

*These are Concordia University's policies and action procedures for complaints involving harassment, discrimination and violence against any member of the Concordia community on the basis of their membership to a protected class.*

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## **A. POLICY AND PROCEDURES: EQUAL OPPORTUNITY, HARASSMENT AND NONDISCRIMINATION**

Concordia University - Portland affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the Concordia's Equity Grievance Review Process, as detailed below. The Equity Grievance Review Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. Concordia University reserves the right to act on incidents occurring on-campus, online or off-campus, when the off-campus conduct could have an on-campus impact or impact on the educational mission of Concordia University.

Concordia's Title IX Coordinator and Deputies for Civil Rights oversee policy development and operational oversight. You may contact Concordia's Title IX Coordinator, or any member of the Equity Grievance Review Panel with reports involving students, staff, faculty, or guests of the university.

Reports of civil rights-based discrimination, harassment and/or retaliation should be made to the Title IX Coordinator promptly, but there is no time limitation on the filing of grievances, as long as the accused individual remains subject to the University's jurisdiction. All reports are acted upon promptly while every effort is made by University to preserve the privacy of reports. Reports of discrimination by the Title IX Coordinator should be reported to the University's President.

This policy applies to behaviors that take place on the campus, at university-sponsored events and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial University interest. A substantial University interest is defined to include:

- a) Any action that constitutes criminal offense as defined by federal or Oregon state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the University is located;
- b) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;

- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the University.

Off-campus discriminatory or harassing speech by employees may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## 1. EQUITY GRIEVANCE REVIEW PANEL

The Equity Grievance Review Panel seeks to prevent and respond to campus incidents of civil rights-based discrimination, harassment and/or violence.

***Inquiries about this policy and procedure may be made internally to:***

- *Megan Bouslaugh, Interim Vice President for Student Affairs/Title IX Administrator*  
Student Affairs – Hagen Center – Second Floor  
Concordia University  
2811 NE Holman Street, Portland, OR 97211  
(503) 493-6546; [mbouslaugh@cu-portland.edu](mailto:mbouslaugh@cu-portland.edu)

**Or to Title IX and Equity Review Deputies:**

- *Vice President of Human Resources*
- *Director of Equity Compliance*
- *Dean of Students*
- *Associate Athletics Director*
- *Online Learning representative*
- *Faculty representative*
- *Associate Dean for Student Engagement*

***Inquiries may be made externally to:***

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW

Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

## 2. CONCORDIA UNIVERSITY'S POLICY ON NONDISCRIMINATION

Concordia University adheres to all federal and state civil rights laws banning discrimination in private institutions of higher education.

### a. Employment Nondiscrimination Statement

Concordia University is a regionally accredited, private university that specializes in undergraduate and graduate programs of professional study grounded in a strong Lutheran Liberal Arts tradition. Concordia University does not discriminate in the employment of individuals on the basis of race, color, national or ethnic origin, familial status, disability, sex, gender, sexual orientation or age; Concordia University reserves the right to give preference in employment based upon religion to further the religious objective of the institution and The Lutheran Church-Missouri Synod.

### b. Student Nondiscrimination Statement

Concordia University admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the university. It does not discriminate on the basis of race, color, national or ethnic origin, familial status, disability, sex, gender, sexual orientation or age in administration of its educational policies and programs, admission policies, scholarship and loan programs, and athletic or other university-administered programs. Complaints or charges should be filed with the Title IX Coordinator: Megan Bouslaugh, Associate Dean for Student Development. Ms. Bouslaugh's office is located in Student Services and she may be reached at 503-493-6546 or [mbouslaugh@cu-portland.edu](mailto:mbouslaugh@cu-portland.edu).

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts

to deny, deprive or limit the educational, employment, social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the University's policy on nondiscrimination. When brought to the attention of the University, any such discrimination will be appropriately remedied by the University according to the procedures below.

### **3. CONCORDIA UNIVERSITY'S POLICY ON ACCOMMODATION OF DISABILITIES**

Concordia University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

Carrie Adams, Human Resources Benefits and Compliance Specialist, has been designated as the ADA Coordinator for employees responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance. Megan Bouslaugh, Associate Dean for Student Development, and Liisa Ferguson, Disability Services Coordinator, and Stephanie Staley, Online Disability Services Coordinator, are responsible for student compliance efforts.

#### **a. Students with Disabilities**

Concordia University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the University.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Learning and Disability Services Coordinator, who coordinates services for students with disabilities. The Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic

programs. Accommodations are granted and coordinated through the Learning and Disability Services Department, not through faculty members for individual classes, or through other staff member related to campus services.

#### b. Employees with Disabilities

Pursuant to the ADA, Concordia University will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to Human Resources Department, and providing appropriate documentation. Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## 4. CONCORDIA UNIVERSITY'S POLICY ON DISCRIMINATORY HARASSMENT

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Concordia University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under University policy.

#### a. Discriminatory and Bias-Related Harassment

Harassment constitutes a form of discrimination that is prohibited by law. Concordia University will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Concordia may also impose sanctions on the harasser. Concordia's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it interferes with,



limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.<sup>1</sup>

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under University policy, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Students.

Concordia University condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by university policy or law.

#### b. Sexual Harassment

Both the Equal Employment Opportunity Commission and the State of Oregon regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Concordia University has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.<sup>2</sup>

Sexual harassment is:

- unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.<sup>3</sup>

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<sup>1</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>2</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” which can be found at <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, as well as the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf)

<sup>3</sup> Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door
- Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.

Anyone experiencing sexual harassment in any Concordia University program is encouraged to report it immediately to the University's Title IX Coordinator.

Sexual harassment creates a hostile environment, and may be disciplined when it is:

- sufficiently severe, persistent/pervasive and objectively offensive that it,
  - has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the university's educational, social and/or residential program, and is
  - based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

### c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Concordia University has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, the University considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Concordia University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Violations include:

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- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
  - An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
  - Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
  - A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

*i. Sexual and Gender Harassment (as defined in section B above)*

*ii. Non-Consensual Sexual Intercourse*

Defined as:

- any sexual penetration or intercourse (anal, oral or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

*iii. Non-Consensual Sexual Contact<sup>4</sup>*

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

*iv. Sexual Exploitation*

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)

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<sup>4</sup> The state definition of sexual assault is any unwanted sexual contact as defined in ORS [163.305](http://www.oregonlaws.org/ors/163.305), which is applicable to criminal prosecutions for sexual assault in Oregon, but may differ from the definition used on campus to address policy violations. <http://www.oregonlaws.org/ors/163.305>

- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent

*v. Sexual or Gender Based Stalking*

- Sexual or Gender-Based Stalking (including on-line activity) is a course of action (more than one behavior) targeted at an individual or group using various forms of contact to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion that would cause a reasonable person with similar identities and circumstances to feel harassed or afraid, or cause fear for or by a third party.

*vi. Interpersonal Violence*

- Interpersonal Violence (including Dating and Domestic Partner Violence) is harm or threat of harm by a current or former partner or spouse, or a person who is or has been in a social relationship of a romantic or intimate nature. The harm or threat of harm can involve physical, sexual, psychological, economic, emotional, or other aspects.

*vii. Non-Consensual Sexual Intercourse*

- Non-Consensual Sexual Intercourse is penetration of the vagina or anus with a penis, finger, tongue, or other object, or oral copulation (mouth to genital contact or genital to mouth contact) without consent or capacity to give consent or by threat or use of force.

## 5. CONSENT<sup>5</sup>

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

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<sup>5</sup> The state definition of consent is (1) A person is considered incapable of consenting to a sexual act if the person is: (a) Under 18 years of age; (b) Mentally defective; (c) Mentally incapacitated; or (d) Physically helpless. (2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence. [1971 c.743 §105; 1999 c.949 §2; 2001 c.104 §52], which is applicable to criminal prosecutions for sex offenses in Oregon, but may differ from the definition used on campus to address policy violations.

In the state of Oregon, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 18 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

## **6. POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## 7. OTHER CIVIL RIGHTS OFFENSES, WHEN THE ACT IS BASED UPON THE STATUS OF A PROTECTED CLASS

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under Oregon State law and prohibited by University policy
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic<sup>6</sup> and/or relationship violence)<sup>7</sup>
- Stalking<sup>8</sup>, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear<sup>9</sup>

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<sup>6</sup> The state definition of domestic violence is [(a) Abuse between family or household members, as those terms are defined in ORS [107.705 \(Definitions for ORS 107.700 to 107.735\)](#); or (b) Abuse, as defined in ORS [107.705 \(Definitions for ORS 107.700 to 107.735\)](#), between partners in a dating relationship, which is applicable to criminal prosecutions for domestic violence in Oregon, but may differ from the definition used on campus to address policy violations.

<sup>7</sup> Examples:

- Employee A has been in an intimate relationship with Employee B for over a year; Employee A punches Employee B in the face during an argument (Dating Violence).
- Student A has been in an intimate relationship with Student B for over a year; Students A & B live together. During an argument, Student A shoves Student B to the ground (Domestic Violence).

<sup>8</sup> The state definition of stalking is (a) The person knowingly alarms or coerces another person or a member of that persons immediate family or household by engaging in repeated and unwanted contact with the other person; (b) It

- Any other University rules, when a violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand up through and including expulsion (students) or termination of employment.

## 8. BYSTANDER INTERVENTION

Concordia University expects all community members to take reasonable and prudent actions to prevent or stop an act of harassment, discrimination and. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority (examples: Public Safety Officers, Residence Life Staff, Title IX Coordinator, etc.). Community members who choose to exercise this positive moral obligation will be supported by the University and protected from retaliation.

## 9. RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing a grievance or for assisting in providing information relevant to a claim of harassment is a serious violation of University policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to

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is objectively reasonable for a person in the victims situation to have been alarmed or coerced by the contact; and (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victims immediate family or household. This is applicable to criminal prosecutions for stalking in Oregon, but may differ from the definition used on campus to address policy violations.

### <sup>9</sup> Examples

- Employee A recently ended an intimate relationship with Employee B. For the past three weeks, B has been sending A 100 text messages per day and waits by A’s car at the end of each day to beg and plead with her to take him back. When she refuses, he loses control, makes threatening gestures, and tells her she will regret this. Employee A indicates she is fearful of what B might do to her (Stalking).
- Mark is a student on campus who has always been fascinated by women who dye their hair. One day, he notices MaryLou, whose hair is dyed a very bright purple. He follows her home to see where she lives, and begins to track her history, actions and movements online. His fascination increases to the point where he follows her frequently on campus, takes pictures of her without her permission, and spies through her window at night with a long-range camera lens. He wants to have her beautiful purple hair for his own, so that he can stroke it whenever he wants.



the Title IX Coordinator and will be promptly investigated. Concordia University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

## **10. REMEDIAL ACTION**

Concordia University will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

Concordia University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described below. Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

## **11. AMNESTY FOR STUDENTS WHO REPORT SEXUAL MISCONDUCT**

The University encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. Concordia recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for his/her/their own conduct. An individual who reports sexual misconduct, either as a Complainant or a third party witness, will not be subject to disciplinary action by the University for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies to the University's student conduct process.

## 12. CONFIDENTIALITY AND REPORTING OF OFFENSES UNDER THIS POLICY

Concordia University officials, depending on their roles at the University have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of these two extremes; neither the University, nor the law, requires them to divulge private information that is shared with them, except in rare circumstances. The following describes the three reporting options at University:

### a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with on-campus counselors, campus health service providers, off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, or on or off-campus members of the clergy/chaplains. *(Please note, professors at Concordia University, who also hold pastoral or ministerial degrees, are not confidential sources, as their primary role at the university is professorial.)* Campus counselors, campus health service providers the campus pastor will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. For employees, the Employee Assistance Program also provides access to a number of counseling sessions free of charge to the employee.

### b. Equity Advocates

Equity Advocates are a private reporting resource. The role of an Advocate is to provide support and resources, and to be available to students who experience civil rights based discrimination. Advocates are trained and available to walk a student through the Equity Grievance Review Process.

Concordia's Equity Advocates will need to report limited information to the Title IX Coordinator: the type of grievance, date and location of the incident. Advocates are not required report any identifying information of the reporting individual, unless it has been

determined that there is a clear campus safety risk, or immediate threat to the individual reporting or another.

#### c. Reporting to other Concordia Faculty and Staff

Those seeking to report misconduct may seek advice from certain resources who are not required to initially tell anyone else your private, personally identifiable information unless there is a pattern of abuse, cause for fear for your safety or the safety of others.

These resources include employees without supervisory responsibility or remedial authority to address discrimination, harassment, retaliation and/or sexual misconduct, such as resident advisors (RAs), non-supervisory faculty members, academic advisors, career services staff, admissions officers, student activities personnel and many others. If a reporting party is unsure of someone's duties and ability to maintain privacy, ask them before talking to them. They will be able to explain and help a reporting party to make decisions about who is in the best position to help. All these resources, such as RAs, are instructed to share incident reports with their supervisors or directly to the Title IX Coordinator, but they do not share any personally identifiable information about the report unless the reporting party gives permission, except in the rare event that the incident reveals a need to protect the reporting party and/or other members of the community. If personally identifiable information is shared, it will be shared with as few people as possible and all efforts will be made to protect privacy to the greatest possible extent.

#### d. Formal Reporting Options

Parties bringing grievances are encouraged to speak to University officials, such as the Title IX Coordinator, Equity Grievance Review Panel members, Dean of Students, Public Safety, or Equity Advocates to make formal reports of incidents of sexual misconduct, harassment, violence and discrimination. Parties bringing grievances have the right, and can expect, to have grievances taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve the rights and privacy of a party bringing a grievance.

## **13. FEDERAL TIMELY WARNING OBLIGATIONS**

Victims of sexual misconduct should be aware that Concordia University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **B. EQUITY GRIEVANCE REVIEW PROCESS FOR RESOLVING GRIEVANCES OF HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION**

Concordia University will act on any formal or informal grievance or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Title IX Coordinator, a member of the Equity Grievance Review Panel (who is not an advocate), or a member of the administration.

The procedures described below will apply to all civil rights-based grievances involving students, staff or faculty members. Redress and requests for responsive actions for grievances brought involving non-members of the community are also covered by these procedures.

### **1. EQUITY GRIEVANCE REVIEW PANEL (EGRP)**

Members of the EGRP are announced in an annual distribution of this policy to campus, prospective students, their parents and prospective employees. The list of members and a description of the panel can be found at [www.cu-portland.edu/EGRP](http://www.cu-portland.edu/EGRP). Members of the EGRP are trained in all aspects of the grievance process, and can serve in any of the following roles, at the direction of the Title IX Coordinator.

- To provide sensitive intake and initial counseling of grievances
- To serve in a mediation role in conflict resolution, when appropriate
- To investigate grievances
- To act as advisors to those involved in grievances
- To serve on administrative hearings for grievances
- To serve on appeal panels for grievances

EGRP members also recommend proactive policies, and serve in an educative role for the community. The President, in consultation with the Title IX Coordinator, appoints the Equity Grievance Review Panel, which reports to the Title IX Coordinator. EGRP members receive annual training organized by the Title IX Coordinator, including a review of Concordia University policies and procedures, so that they are able to provide accurate information to members of the community. All EGRP members are required to attend this annual training.

Panel members are usually appointed to three-year terms. Appointments to the EGRP should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving on the EGRP are encouraged to contact the Title IX Coordinator.

## 2. FILING A GRIEVANCE

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact the Title IX Coordinator, or a member of the EGRP. It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member, or any member of the community may contact Concordia Public Safety. These individuals will in turn notify the Title IX Coordinator, Human Resources Director, or member of the EGRP deputy team. The Concordia University website also includes a reporting form at [www.cu-portland.edu/EGRPGrievanceForm](http://www.cu-portland.edu/EGRPGrievanceForm) which may serve to initiate a grievance.

All employees receiving reports of a potential violation of Concordia University policy are expected to promptly contact the Title IX Coordinator or a EGRP deputy team member, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any grievances received by any party will be reported to the Title IX Coordinator, but, subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of a grievance. In all cases, Concordia will give consideration to the party bringing a grievance with respect to how the grievance is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal grievance.

### a. Grievance Intake

Following receipt of notice or a grievance, the Title IX Coordinator<sup>10</sup> will, promptly assign an Advocate to work as advisor to the person who reported the grievance, or party bringing a grievance may choose from the Equity Advocate pool (or choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor). Normally, within two business days, an initial determination is made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the grievance does not appear to allege a policy violation or if conflict resolution is desired by the party bringing a grievance, and appears appropriate given the nature of the alleged behavior, then the grievance does not proceed to investigation.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The University aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties.

#### b. Investigation

If a party bringing a grievance wishes to pursue a formal grievance or if the University, based on the alleged policy violation, wishes to pursue a formal grievance, then the Title IX Coordinator appoints EGRP members to conduct the investigation, usually within two business days of determining that a grievance should proceed. Investigation of grievances brought directly by those alleging harm should be completed expeditiously, normally within 10 business days of notice to the Title IX Coordinator. Investigation may take longer when initial grievances fail to provide direct first-hand information. The University may undertake a short delay (3-10 days, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. Concordia's action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

Investigators shall produce a Summary Investigation Report, which shall

- 1) identify all individuals interviewed during the investigation, with the investigators' assessment of the individuals' credibility
- 2) note any documentary or other non-witness evidence which was found to be

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<sup>10</sup> If circumstances require, the President, Human Resources Director or Title IX Coordinator may designate another person to oversee the process below, should a grievance be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

relevant and persuasive

- 3) contain factual conclusions reached by the investigators, based on preponderance of the evidence standard
- 4) contain recommended findings as to whether or not a policy violation occurred; and whether or not any identifiable individual should be found responsible for any violation of policy

#### c. Interim Remedies

If, in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services or to the Employee Assistance Program, education to the community, altering the housing situation of an accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

The University may interim suspend a student, employee or organization pending the completion of EGRP investigation and procedures. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator, or designee, has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to University housing and/or the University campus/facilities/events. As determined by the Title IX Coordinator or designee, this restriction includes classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Coordinator, or designee, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

#### d. Grievance Resolution

During or upon the completion of investigation, the investigators will meet with the Title IX

Coordinator. Based on that meeting, the Title IX Coordinator will make a decision on whether there is reasonable cause to proceed with the grievance. If the Title IX Coordinator decides that no policy violation has occurred or that the preponderance of evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation) does not support a finding of a policy violation, then the process will end unless the party bringing a grievance requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Title IX Coordinator. If there is reasonable cause, the Title IX Coordinator will direct the investigation to continue, or if there is a preponderance of evidence of a violation, then the Title IX Coordinator may recommend conflict resolution, a resolution without a hearing or a formal hearing, based on the below criteria.

#### e. Conflict Resolution

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, an EGRP member will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict resolution will not be the primary resolution mechanism used to address grievances of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal EGRP grievance, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing.

#### f. Resolution without a Hearing

Resolution without a hearing can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the process. The Title IX Coordinator will provide written notification of a grievance to any member of the University community who is accused of an offense of harassment, discrimination, or retaliation. The Title IX Coordinator, or Administrative Findings Officer designated by the Title IX Coordinator, will meet with the complainant, and then with the responding party,



to review the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX Coordinator will render a finding that the individual is in violation of University policy for the admitted conduct, and may proceed to convene a formal hearing on any remaining disputed violations. For admitted violations the Title IX Coordinator will recommend an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the party bringing a grievance and responding party, the Title IX Coordinator will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim and the community. If either party rejects the sanction/responsive action, an Administrative Findings Hearing will be held on the sanction only, according to the EGRP procedures below, except in the case of at-will employees for whom findings and responsive actions will be determined by the Director of Human Resources, based on the results of the investigation.

#### g. Administrative Findings Hearing

For any grievances that are not appropriate for conflict resolution and which are not resolved at the presentation of the investigative findings, the Title IX Coordinator will initiate a formal Administrative Findings Hearing.

#### h. Administrative Hearings Officer

The Title IX Coordinator will designate a Hearings Officer from the Equity Grievance Review Panel. This Hearings Officer will be an EGRP member who has not been involved in the case in another role. The designated Hearings Officer will hold an Administrative Findings Hearing, which shall include a presentation by the investigation team. There will be a separate hearing for the accused and the complainant following the initial presentation of the Findings Report with initial outcomes.

#### i. Notification of Charges

At least one week prior to the administrative findings hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Administrative Hearings Officer will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is

mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Co-chair may reschedule the hearing.

- The parties may have the assistance of an Equity Advocate, or other advocate, at the hearing. Typically, advocates are members of the campus community, but the Title IX Coordinator may grant permission for an outside advisor upon request. The advisor may not make a presentation or represent the party bringing a grievance or responding party during the hearing. The parties to the hearing are expected to ask and respond to questions on their own behalf, without representation by their advocate. The advisor may consult with the advisee quietly or in writing, or outside the hearing during breaks, but may not speak on behalf of the advisee to the panel.
- Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-day goal for resolution.

#### j. Hearing Procedures

An Administrative Findings Hearing will be convened, usually within one to two weeks of the completion of the investigation, and will be conducted in private. The Administrative Hearings Officer has the authority to hear all collateral misconduct, meaning that he or she hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within EGRP jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the Administrative Hearings Officer, the investigator(s) who conducted the investigation on the grievance, the party bringing a grievance and, in a separate findings hearing, the responding party(ies) (or three organizational representatives in a case where an organization is charged), as well as advocates to the parties. The Hearings Officer will exchange the pertinent documentary evidence and any written findings from the investigators between the parties at least two business days prior to the hearing. In addition, the parties will be given the name of the Administrative Hearings Officer at least two business days in advance of the hearing. Should either (any) party object to the Administrative Findings Officer, he/she must raise all objections, in writing, to the Title IX Coordinator immediately. An Administrative Hearings Officer will only be unseated if the Title IX Coordinator concludes that their bias precludes an impartial hearing of the grievance. Additionally, any Administrative Hearings Officer who feels

he/she cannot make an objective determination must recuse himself or herself from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

Generally, witnesses do not need to be physically present at the Administrative Findings Hearing as their testimony can be adequately summarized by the investigator(s) in the investigative report and during the hearing. All parties will have ample opportunity to present facts and arguments in full and ask questions regarding the investigation. If alternative questioning mechanisms are desired (screens, Skype, etc.), the parties should request them from the Administrative Hearings Officer at least two business days prior to the hearing.

Once the procedures are explained and the participants are introduced, the investigators will present the report of the investigation first, and be subject to questioning by the parties and the Administrative Hearings Officer. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Administrative Hearings Officer. The findings of the investigation are not binding on the Administrative Hearings Officer, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) is/are questioned, the Administrative Hearings Officer will permit questioning of and by the parties.

Formal rules of evidence will not apply. Any evidence that the Administrative Hearings Officer believes is relevant and credible may be considered, including history and pattern evidence. The Administrative Hearings Officer will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility. The Administrative Hearings Officer will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Administrative Hearings Officer determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of or the character of the victim/party bringing a grievance.

There will be no observers in the hearing. The Administrative Hearings Officer *may* allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Administrative Hearings Officer or the parties

involved. The Administrative Hearings Officer does not hear from character witnesses, but will accept up to two letters supporting the character of the individuals involved.

In hearings involving more than one accused individual or in which two parties bringing a grievance have accused the same individual of substantially similar conduct, the standard procedure will be to hear the grievances jointly; however, the Title IX Coordinator may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to University consequences for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advocates.

Hearings are recorded for purposes of review in the event of an appeal. The Administrative Hearings Officer, the parties and/or the persons who initiated the action, and appropriate administrative officers of the University will be allowed to review the record in a location determined by the Title IX Coordinator or designee. No person will be given or be allowed to make a copy of the record without permission of the Title IX Coordinator. Persons given access to the record will be required to sign an agreement confirming that they will protect the privacy of the information contained in the recording.

#### k. Decisions

The Administrative Hearings Officer, with or without the investigation team, will deliberate in closed session to determine whether the responding party is responsible or not responsible for the violation(s) in question. The Administrative Hearings Officer will base his or her determination on a preponderance of the evidence (i.e., whether it is more likely than not that the accused individual committed each alleged violation). If an individual responding party or organization is found responsible by the Administrative Hearings Officer, the Administrative Hearings Officer will communicate appropriate sanctions to the Title IX Coordinator.

The Administrative Hearings Officer will prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the finding, the information cited in support of his or her recommendation and any information the Administrative Hearings Officer excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations.

The Title IX Coordinator will inform the accused individual and the party bringing a grievance of the final determination within 2-3 business days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## I. Sanctions

Sanctions or responsive actions will be determined by the Title IX Coordinator, based on the recommendation of the Administrative Hearings Officer. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous grievances or allegations involving similar conduct
- Any other information deemed relevant by the EGRP
- 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 victim and the community

### i. Student Sanctions

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

- *Warning*: A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at University. This sanction will be noted as a Conduct Suspension

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

#### *ii. Employee Sanctions*

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

#### *m. Withdrawal or Resignation While Charges Pending*

Students: The University does not permit a student to withdraw if that student has a grievance pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, or for charges under the Code of Student Conduct. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to University unless all sanctions have been satisfied.

Employees: Should an employee resign while charges are pending, the records of the Title IX Coordinator will reflect that status, as will University responses to any future inquiries regarding employment references for that individual. The Title IX Coordinator will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

#### *n. Appeals*

All requests for appeal considerations must be submitted in writing to the Title IX Coordinator within four business days of the delivery of the written finding of the EGRP.

A three-member panel of the EGRP, designated by the Title IX Coordinator, who were not involved in the grievance previously will consider all appeal requests. Any party may appeal, but appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation, or fall outside the range of sanctions the University has designated for this offense.

The appeals panel of the EGRP will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the EGRP appeals panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the EGRP panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or heard by the three-member panel of the EGRP.
- Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Coordinator will normally, after conferring with the EGRP appeals panel,

render a written decision on the appeal to all parties within 2-3 business days from hearing of the appeal.

- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.
- Once an appeal is decided, the outcome is final. Parties are permitted to make an appeal to the university president one criteria: faulty Equity Grievance Procedures.

#### **o. Equity Grievance Review Process Appeal to the University President**

When any party requests a presidential appeal, on the grounds of an Equity Grievance Review Process complaint, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the university President finds that grounds have been met, and proceeds, additional principles governing the hearing of presidential appeals include the following:

- Appeals decisions by university President are to be deferential to the original equity grievance procedure, making decisions to create a new investigation or hearing only where there is clear error in Concordia's Equity Grievance Review Process, only if there is a compelling justification to do so.
- Presidential Appeals are not intended to be full re-hearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal.
- Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The university President will normally, after conferring with the Title IX Coordinator, render a written decision on the appeal to all parties within 2-3 business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.

#### **p. Failure to Complete Sanctions/Comply with Responsive Actions**

All responding parties are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Title IX Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in



additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### q. Records

In implementing this policy, records of all grievances, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely in the Title IX Coordinator database.

#### r. Statement of the Rights of a Party Bringing a Grievance

- To be treated with respect by University officials.
- To take advantage of campus support resources (such as Counseling Services, the campus pastor, and University Health Services for students, or EAP services for employees).
- To experience a safe living, educational and work environment.
- To have an advocate during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have grievances heard in substantial accordance with these procedures.
- To full participation of the injured party in any EGRP process whether the injured party is serving as the party bringing a grievance or the University is serving as party bringing a grievance.
- To be informed in writing of the outcome/resolution of the grievance, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Housing and living accommodations.
- No contacts.

#### s. Statement of the Rights of the Responding Party

- To be treated with respect by University officials.
- To take advantage of campus support resources (such as Counseling Services, the campus pastor, and University Health Services for students, or EAP services for employees).
- To have an advocate during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.

- To have grievances heard in substantial accordance with these procedures.
- To be informed of the outcome/resolution of the grievance and the rationale for the outcome, in writing.

### 3. REVISION

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

*This policy and procedure was approved by Concordia's President, Dr. Charles Schlimpert, and implemented in September of 2014.*