

# **Jamestown Business College**

## **Grievance Procedures for Sex-Based Harassment Complaints for Students and Employees**

**August 1, 2024**

### **I. Effective Date and Changes to Procedure Based on Court Rulings and Legal Challenges or Changes in Law or Regulation**

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024, will be processed through the institution's Title IX Grievance Policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedures in their entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or JBC's Student Code of Conduct. Jamestown Business College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

### **II. Scope of Procedure**

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

### **III. Jurisdiction of Procedure**

Jamestown Business College's Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;
- The conduct alleged occurred in Jamestown Business College's Education Program or Activity and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

**NOTE:** Jamestown Business College has an obligation to address a sex-based Hostile Environment under its Education Program or Activity, even when some conduct alleged to be contributing to the Hostile Environment occurred outside Jamestown Business College's Education Program or Activity, or outside of the United States. Jamestown Business College's Title IX Coordinator will work with all Complaints to assess such Complaints that may fall under these criteria, and direct to appropriate Jamestown Business College Policies and Procedures that may apply if this Grievance Procedure does not. Jamestown Business College will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Procedure as outlined in the Dismissals section.

Conduct that occurs under Jamestown Business College's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a Student organization that is officially recognized by Jamestown Business College, and conduct that is subject to Jamestown Business College's disciplinary authority under Jamestown Business College Student Code of Conduct.

If all elements of jurisdiction are met, Jamestown Business College will investigate the allegations according to this Grievance Procedure as appropriate, or unless there are grounds for dismissal of the Complaint.

#### **IV. Non-Discrimination in Application**

The requirements and protections of this Grievance Procedure apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by applicable federal, state or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a Complaint about the institution's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

#### **V. Definitions**

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by Jamestown Business College.
2. **Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.<sup>1</sup>

3. **Complainant** means:
  - (1) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in Jamestown Business College's Education Program or Activity; or
  - (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Grievance Procedure and who was participating or attempting to participate in Jamestown Business College's Education Program or Activity at the time of the alleged Sex-Based Harassment.
4. **Complaint** means an oral or written request to Jamestown Business College that objectively can be understood as a request for Jamestown Business College to investigate and make a determination about alleged Sex-Based Harassment at the institution.
5. **Confidential Employee** means:
  - (1) an employee of Jamestown Business College whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of Jamestown Business College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
  - (3) an employee of Jamestown Business College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
6. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Jamestown Business College's prohibition Sex-Based Harassment.
7. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by Jamestown Business College that receives Federal financial assistance.
8. **Party** means Complainant or Respondent.

9. **Peer Retaliation** means Retaliation by a Student against another Student.
10. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
11. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Jamestown Business College identifies as having had their equal access to Jamestown Business College's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to Jamestown Business College's Education Program or Activity after Jamestown Business College determines that Sex-Based Harassment occurred.
12. **Respondent** means a person who is alleged to have violated Jamestown Business College's prohibition on Sex-Based Harassment.
13. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by Jamestown Business College, a Student, or an employee or other person authorized by Jamestown Business College to provide aid, benefit, or service under Jamestown Business College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure, including an informal resolution process].
14. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:
- (1) *Quid pro quo harassment*. An employee, agent or other person authorized by Jamestown Business College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- (2) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Jamestown Business College's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access Jamestown Business College's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles

within Jamestown Business College's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in Jamestown Business College's Education Program or Activity;

(3) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

15. ***Student*** means a person who has gained Admission.

16. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to Jamestown Business College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Jamestown Business College's educational environment; or (2) provide support during Jamestown Business College's Grievance Procedure for Sex-Based Harassment or during the informal resolution process.

## **VI. NOTE: Disability Accommodations**

### *Generally*

This Grievance Procedure does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### *Requests for Reasonable Accommodations During the Title IX Grievance Procedure*

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Dean's office to provide support to Students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

## **VII. Basic Requirements of the Grievance Procedure**

Jamestown Business College is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by Jamestown Business College as a Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;

- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how Jamestown Business College will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure.

## **VIII. Reporting Sex-Based Harassment to the Institution**

### *Non-Confidential Reports*

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

#### ***Contact Information for the Title IX Coordinator at Jamestown Business College:***

Name: Pamela Reese

Title: Title IX Coordinator

Office Address: 7 Fairmount Avenue, Jamestown, NY 14701

Email Address: [pamelareese@jbc.edu](mailto:pamelareese@jbc.edu)

Telephone Number: 716-664-5100

The following officials at Jamestown Business College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under Title IX;
- all other employees at Jamestown Business College that are not designated as confidential resources

The following officials at Jamestown Business College may provide confidentiality:

Name: Erica Sheesley

Title: Registrar

Office Address: 7 Fairmount Avenue, Jamestown, NY 14701

Email Address: [ericasheesley@jbc.edu](mailto:ericasheesley@jbc.edu)

Telephone Number: 716-664-5100

## **IX. Supportive and Interim Measures**

### *Providing Supportive Measures*

Complainants who report allegations of Sex-Based Harassment have the right to receive Supportive Measures from Jamestown Business College regardless of whether they file a Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may vary depending upon what is reasonably available at Jamestown Business College.

As appropriate, Supportive Measures may include, without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Jamestown Business College's educational environment or to provide support during Jamestown Business College's Sex-Based Harassment grievance procedure under this policy or during informal resolution under this procedure.

Jamestown Business College may modify or terminate Supportive Measures at the conclusion of the grievance procedure or at the conclusion of the informal resolution process or may continue them beyond that point within Jamestown Business College's discretion.

Jamestown Business College will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Jamestown Business College's education program or activity, or there is an exception that applies, such as:

- Jamestown Business College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;



- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Jamestown Business College’s education program or activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

*Process for Review of Supportive Measures*

Jamestown Business College provides for a Complainant or Respondent to seek modification or reversal of Jamestown Business College’s decision to provide, deny, modify or terminate a Supportive Measure. Grounds for challenge of Supportive Measures include, but are not limited to:

- Whether a Supportive Measure is reasonably burdensome;
- Whether a Supportive Measure is reasonably available;
- Whether a Supportive Measure is being imposed for punitive or disciplinary reasons;
- Whether the Supportive Measure is being imposed without fee or charge; and
- Whether the Supportive Measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.
- Request for a modification or reversal of a supportive measure must be timely and should be submitted within 5 calendar days. Jamestown Business College will conduct a fact-specific inquiry into timeliness.

This review will be conducted by an impartial employee of Jamestown Business College, who did not make the challenged decision on the original supportive measure request. The impartial employee of Jamestown Business College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing Supportive Measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual Supportive Measures. Challenges by one Party will not be heard to Supportive Measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

### *Emergency Removal*

Jamestown Business College retains the authority to remove a Respondent from all or part of Jamestown Business College's education program or activity on an emergency basis, where Jamestown Business College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Jamestown Business College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

### *Administrative Leave*

Jamestown Business College retains the authority to place a non-Student employee Respondent on administrative leave during the Title IX Grievance Procedures, consistent with the employee handbook.

**Note on Student employees:** when a Complainant or Respondent is both a Student and an employee of Jamestown Business College, Jamestown Business College must make a fact-specific inquiry to determine whether these procedures apply to that Student employee. Jamestown Business College will consider if the Complainant or Respondent's primary relationship with Jamestown Business College is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

## **X. The Title IX Grievance Procedure for Allegations of Sex-Based Harassment**

### **A. Filing a Complaint**

*Who can make a Complaint?*

- A Complainant (as defined in Section V(3) of this policy); or
- The Title IX Coordinator.

*Note on Title IX Coordinator initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of

an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
- Whether Jamestown Business College could end the alleged Sex-Based Harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Jamestown Business College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of these procedures.

*Is there a particular format that the Complaint needs to be in?*

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to Jamestown Business College that objectively can be understood as a request for Jamestown Business College to investigate and make a determination about alleged Sex-Based Harassment at the institution.

*Who can I report a Complaint to?*

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

Jamestown Business College requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of Jamestown Business College or has responsibility for administrative leadership, teaching, or advising in Jamestown Business College's education program or activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

All other employees at Jamestown Business College who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex-discrimination, including Sex-Based Harassment.

**Note:** If an employee has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

*What is the timeframe for Jamestown Business College to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?*

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure within 5 business days after the Complaint is made, and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

*Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?*

Yes. Jamestown Business College has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

## **B. Multi-Party Situations and Consolidation of Complaints**

Jamestown Business College may consolidate Complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

Jamestown Business College can consider factors when making this fact-specific determination, which include, but are not limited to:

- The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

## **C. Dismissal of a Complaint**

### *Grounds for Dismissal*

Jamestown Business College may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- Jamestown Business College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Jamestown Business College's education program or activity and is not employed by Jamestown Business College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and Jamestown Business College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Procedure even if proven; or
- Jamestown Business College determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures.  
**Note:** Jamestown Business College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

### *Notice of Dismissal*

If Jamestown Business College dismisses a Complaint, Jamestown Business College is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Jamestown Business College must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under *Appeal of Dismissals*.

### *Appeals of Dismissals*

Jamestown Business College must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity appeal the dismissal of a Complaint on the following grounds:

- ***Procedural irregularity***: procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Jamestown Business College’s own policy to a degree that had material effect on the outcome of the matter);
- ***New evidence***: New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal of the Complaint was made; and
- ***Bias or Conflict of Interest***: The Title IX Coordinator, investigator(s), or decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then Jamestown Business College must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays (or pauses) any sanctions for the pendency of an appeal.

Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals may be no longer than ten (10) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by the Student Conduct Board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

## **D. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to the investigation and adjudication of only the allegations that constitute covered sexual harassment.

## **E. Notice of Allegations**

Upon initiating Jamestown Business College's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after Jamestown Business College receives a Complaint, if there are no extenuating circumstances. Jamestown Business College will provide the Notice of Allegations within five (5) business days after receiving a Complaint.

*What does the Notice of Allegations Include?*

The written Notice of Allegations must include:

- Jamestown Business College's Grievance Procedure and Jamestown Business College's Informal Resolution process.
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedure, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to Jamestown Business College;
- A statement that the Parties are entitled to
  - an equal opportunity to access the Relevant and not otherwise impermissible evidence; or
  - an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of Jamestown Business College's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;

- Jamestown Business College’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during Jamestown Business College’s Grievance Procedure;] and
- If, in the course of an investigation, Jamestown Business College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, Jamestown Business College is required to provide written notice of any additional allegations to the Parties whose identities are known.

*What if Jamestown Business College decides to investigate additional allegations of Sex-Based Harassment?*

If, in the course of an investigation, Jamestown Business College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Procedure, Jamestown Business College shall provide notice of the additional allegations to the Parties whose identities are known.

*What if I have safety concerns about a Notice of Allegations being issued to a Respondent?*

To the extent that Jamestown Business College has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Jamestown Business College through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

## **F. Advisor of Choice and Participation of Advisor of Choice**

A Party’s advisor of choice may accompany the Party to any meeting or proceeding, and that Jamestown Business College cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor does not follow Jamestown Business College’s established rules of decorum and rules around participation.

## **G. Investigation**

*General Rules of Investigations*

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

Jamestown Business College, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation



or hearing. This does not shift the burden of proof away from Jamestown Business College and does not indicate responsibility.

Jamestown Business College cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. Jamestown Business College will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

#### *Notice of participation*

Jamestown Business College will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

#### *Advisors of Choice and Participation of Advisors of Choice*

Jamestown Business College will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.

#### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

Parties are allowed to call “expert witnesses” for direct examination and credibility assessment by the hearing board. Jamestown Business College does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify, the decisionmaker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

#### *Character Witnesses*

Jamestown Business College allows Parties to call character witnesses to testify. Jamestown Business College does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify, the decisionmaker will be instructed to afford very low weight to any non-factual character testimony of any witness.

### *Access to and Review of the Investigative Report*

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party and their advisors of choice with an equal opportunity to access and review an accurate description of the Relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying Relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to and during the live hearing.

Jamestown Business College will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Jamestown Business College Student Code of Conduct and other Jamestown Business College policies and/or procedures that may apply.

**Note:** Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

### *Review and Access to Relevant and Not Otherwise Impermissible Evidence*

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to and during the live hearing.

Jamestown Business College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Jamestown Business College Student Code of Conduct and Jamestown Business College policies and/or procedures that may apply.

**Note:** Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

### *Relevant Evidence*

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure.

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by Jamestown Business College to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

- Evidence that is protected under a privileged as recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, Jamestown Business College obtains that Party's or witness's voluntary, written Consent for use in Jamestown Business College's Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

### *Timeframes*

An investigation shall take X school/calendar/business days to complete. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, as detailed below.

### *Extensions and Delays*

Jamestown Business College allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

## **H. Live Hearing**

### *General Rules for Live Hearings*

Jamestown Business College will not issue a finding or Disciplinary Sanction arising from an allegation of Sex-Based Harassment without holding a live hearing unless otherwise resolved through an informal resolution process as outlined in this Grievance Procedure.

The live hearing may be conducted with the Parties physically present in the same geographic location. Jamestown Business College has the discretion to conduct the live hearing with the Parties physically present in separate locations, with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking. A Party may also request this option prior to the hearing.

Jamestown Business College shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

### *Participants in the Live Hearing*

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent (The Parties)*

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and Jamestown Business College may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. Jamestown Business College will not threaten, coerce, intimidate or discriminate against any Party in an attempt to secure the Party's participation. The decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing, or a refusal to answer questions.

The Parties shall be subject to Jamestown Business College's rules of decorum [Jamestown Business College - Title IX and Compliance \(jbc.edu\)](http://jbc.edu).

#### *The Decisionmaker*

The hearing body will consist of three (3) decisionmakers. No member of the hearing body will have served as the Title IX Coordinator, Title IX investigator, or advisor to any Party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case. The hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decisionmaker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of Choice*

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party. An advisor of choice is not prohibited from being a witness in the hearing. Advisors of choice are subject to Jamestown Business College's rules of decorum, and may be removed upon violation of those [Jamestown Business College - Title IX and Compliance \(jbc.edu\)](http://jbc.edu).

#### *Witnesses*

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation. Witnesses are subject to Jamestown Business College's rules of decorum, and may be removed upon violation of those rules [Jamestown Business College - Title IX and Compliance \(jbc.edu\)](http://jbc.edu).

#### *Hearing Procedures*

For all live hearings conducted, the decisionmaker will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

#### *Questioning Parties and Witnesses*

During a live hearing, each Party is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the hearing board. No questioning of another Party or witness will be conducted by a Party personally.

Where questioning is advisor-conducted, and a Party does not have an advisor to ask questions of their behalf, Jamestown Business College will provide the Party with an advisor of Jamestown

Business College's choice, without charge to the Party, for the purpose of advisor-conducted questioning. Such an appointed advisor will not be a Confidential Employee, and Jamestown Business College may appoint, but is not required to appoint, an attorney to serve as an advisor.

*Procedures for Decisionmaker's Evaluation of Questions and Limitation on Questions*

The three (3) decision-makers will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure prior to the question being posed and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If the decision-makers determine that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The panel of three (3) decision-makers] must give a Party an opportunity to clarify or revise a question that a panel of three (3) decision-makers has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

*Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions*

A panel of three (3) decision-makers may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The panel of three (3) decision-makers must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

**Rules of Decorum for Title IX Hearings** (applied equally to both parties)

Rules of Decorum are to be observed in the hearing, and applied equally to all parties and advisors, regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

1. Questions must be conveyed in a neutral, respectful tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally misname or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.

5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Panel Chair.
6. The advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be investigative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Panel Officer(s) or by the advisor in cross-examination. When the Hearing Panel Chair determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

### **Objections to Relevance of Testimony or Evidence**

Only the Complainant or Respondent may raise objections to the relevance of testimony or evidence. Such objections must be directed to the Hearing Panel Chair, who will determine whether the testimony or evidence is relevant and should be admitted or irrelevant and, thus, inadmissible.

### **Warning and Removal Process**

The Hearing Panel Officers shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Panel Chair will notify the offending person of any violation of the Rules. Upon a second or further violation of the Rules of Decorum, the Hearing Panel Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process. Where the Hearing Panel removes a party’s advisor, the party may select a different advisor of their choice or must accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance. The Hearing Panel shall document any decision to remove an advisor in the written determination regarding responsibility. For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis.

### **Relevant Questions Asked in Violation of the Rules of Decorum**

When or if an advisor asks a relevant question in a manner that violates the Rules of Decorum, the question may not be deemed irrelevant by the Hearing Panel Officers simply because of the manner it was delivered. Under that circumstance, the Hearing Panel Chair will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be

re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules of Decorum).

#### *Continuances or Granting Extensions*

Jamestown Business College may determine that multiple sessions or a continuance (a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, Jamestown Business College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

#### **Newly-discovered Evidence**

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a Party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The Party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-maker answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

## **I. Determination Regarding Responsibility**

#### *Standard of Proof*

Jamestown Business College uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred unless required to use clear and convincing evidence standard. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedure occurred evidence is clear and convincing, highly and substantially likely, to a neutral decisionmaker.

#### *General Considerations for Evaluating Evidence and Testimony*

The decisionmaker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that Sex-Based Harassment occurred.



Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

#### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

Parties are allowed to call "expert witnesses" for direct examination and credibility assessment by the hearing board. Jamestown Business College does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify, the decisionmaker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

#### *Character Witnesses*

Jamestown Business College allows Parties to call character witnesses to testify. Jamestown Business College does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify, the decisionmaker will be instructed to afford very low weight to any non-factual character testimony of any witness.

Where a Party or witness' conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including without limitation, witness tampering and intimidation, the decisionmaker may draw an adverse inference as to that Party or witness' credibility.

### *Communication of the Determination in Writing*

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that Jamestown Business College used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions Jamestown Business College will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by Jamestown Business College to the Complainant, and, to the extent appropriate, other Students identified by Jamestown Business College to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- Jamestown Business College's procedures for Complainant and Respondent to appeal.

### *Timeline of Determination Regarding Responsibility*

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Jamestown Business College within 5 business days of the completion of the hearing.

### *Finality of Determination*

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

## **J. Appeals**

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within 5 business days of being notified of the decision, indicating the grounds for appeal.

For appeals resulting from dismissal of a Complaint, please see the section on *Dismissal of Complaints*.

### *Grounds for Appeal*

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;

- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

*Additional Procedures for Appeal Process*

Jamestown Business College will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive Measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals will be decided by the Student Conduct Board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

## **K. INFORMAL RESOLUTION**

*Procedures for Entering and Exiting Informal Resolution Process*

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek Jamestown Business College's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter the Jamestown Business College's informal resolution process at any time through an informed written Consent. This informed written Consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and Jamestown Business College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within Jamestown Business College's Education Program or Activity.

*Notice Prior to Entry Into Informal Resolution Process*

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Jamestown Business College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Jamestown Business College's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Jamestown Business College will maintain and whether and how Jamestown Business College could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

*Determination to Approve Entry into Informal Resolution Process*

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

*Informal resolution processes may never be applied where the allegations include Sexual Assault: Penetration or the equivalent.*

Informal resolution may be available to address allegations of Student-on-Student and is not allowed to address allegations of employee-on-Student Sex-Based Harassment.

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, Jamestown Business College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in Jamestown Business College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may never serve as the facilitator, subject to these restrictions

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Jamestown Business College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Jamestown Business College's response to sex discrimination;
- The rules and practices associated with Jamestown Business College's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

### *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of Jamestown Business College's education programs or activities or attendance at specific events, including restrictions Jamestown Business College could have imposed as Remedies or Disciplinary Sanctions had Jamestown Business College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

### *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Jamestown Business College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Jamestown Business College may void the agreement and initiate or resume the Grievance Procedure.

### *Confidentiality:*

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint are confidential while the Parties participate in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Procedure, provided that this information is disclosed and reviewed by the Parties under Jamestown Business College's Grievance Procedure.

### *Informal Resolution Options*

Jamestown Business College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

#### Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision-maker will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the appeal process within the college's Grievance Procedures.

## Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a Student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the Consent of both Parties, who will be asked not to contact one another during the process. The Office will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 days after the Office receives Consent to mediate from both Parties, and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Office. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Title IX office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

## **XI. Retaliation**

When Jamestown Business College has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedure, Jamestown Business College is obligated to initiate its Grievance Procedure or, as appropriate, Jamestown Business College's informal resolution process.

Jamestown Business College will keep the identity of any individual who has made a report or Complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Complaint of Sex-Based Harassment or sex discrimination under Jamestown Business College's Title IX Grievance Procedure, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34

CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under Jamestown Business College's Title IX Grievance Procedure.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Jamestown Business College's Grievance Procedure.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or Complaint of sex discrimination or a report or Complaint of Sex-Based Harassment. The college's amnesty policy protects students who come forward.

Complaints alleging Retaliation may be filed according to Jamestown Business College's Grievance Procedure at [Jamestown Business College - Title IX and Compliance \(jbc.edu\)](https://www.jbc.edu/title-ix-and-compliance)

### **MODEL CODE CHARGES:**

**CODE CHARGE ONE: Sex-Based Harassment:** sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

- A. *Quid pro quo harassment.* An employee, agent or other person authorized by Jamestown Business College's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- B. *Hostile Environment harassment.* Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Jamestown Business College's education program or activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following:
  - (i) the degree to which the conduct affected the Complainant's ability to access Jamestown Business College's education program or activity;



- (ii) the type, frequency, and duration of the conduct;
- (iii) the Parties' ages, roles within Jamestown Business College's education program or activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct;
- (iv) the location of the conduct and the context in which the conduct occurred; and
- (v) other Sex-Based Harassment in Jamestown Business College's education program or activity;

**Code Charge Two: Sexual Assault:** as defined in the Clery Act, meaning any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

**Code Charge Three: Dating Violence:** as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act, is any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

**Code Charge Four: Domestic Violence:** any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State.

**Code Charge Five: Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

## **XII. Disciplinary Sanctions that may arise from each code charge.**

The following is a list of sanctions that could occur under Title IX and the Drug and Alcohol policy. Failure to comply with sanctions and directives is a violation of College policy subject to additional conduct charges which are all described below.

## **Sanctions**

A sanction is a requirement or status that is imposed as a result of either accepting responsibility or being found responsible for violating the student code of conduct, Community Rights and Responsibilities. Disciplinary sanctions shall be communicated to students in writing via College email, which is the official means of communication between Student Conduct Administrators and students. Sanctions are determined by the seriousness of the code violation and are not necessarily progressive. For example, a student with no prior disciplinary record may be assigned a sanction commensurate with the offense up to and including removal from residence, suspension or dismissal. Failure to complete a sanction may result in a hold being placed on a student's transcript preventing the student from registering.

### **Verbal Conduct Warning**

A verbal notice to a student that the behavior is counter to the expectations in the student Code of Conduct. A Verbal Conduct Warning is issued for low-level behavior infractions. This is not considered a formal referral, rather an understanding between the administrator and student with the expectation that the student modifies future behavior.

### **Written Conduct Warning**

This is a lower-level sanction issued as a result of a formal Student Conduct Referral. A student is placed on Written Conduct Warning for a period of four (4) months. This serves as a strong notice to a student that the behavior is counter to the expectations in the student code of conduct.

### **Disciplinary Probation**

This is a higher-level sanction issued as a result of a formal Student Conduct Referral that does not compromise a student's housing or their status as a student. Disciplinary Probation generally lasts fifteen (15) weeks (while classes are in session) but may last as long as two semesters and includes all the restrictions of the Written Conduct Warning. This is an official notice that advises that the student may risk separation from the college if there are any further violations.

### **Terminal Disciplinary Probation**

This is issued as a result of a formal Student Conduct Referral and is imposed for serious violations or a pattern of violations of the student code of conduct. A student is placed on Terminal Disciplinary Probation for a specified period to include until Graduation based on the violation. Terminal Disciplinary Probation may last from one (1) to eight (8) semesters. Having an active Terminal Disciplinary Probation status can affect your ability to hold positions with campus offices and/or organizations and other campus opportunities. Specifically, a student cannot run for or hold certain campus-wide leadership positions including elected or appointed student government offices; hold a position in Residential Life; or serve on the Student Conduct Board.

### **Deferred Suspension**

This sanction is imposed when the hearing officer/board has found the student(s) responsible for a violation sufficient to warrant suspension but feels there are mitigating circumstances that warrant one final chance. Deferred suspension may last from one (1) to eight (8) semesters. Being found responsible for another violation during the period of deferred suspension, no matter how minor, will result in immediate suspension.

### **Disciplinary Suspension**

A student who is suspended from the College is unable to register for and attend classes or to be present on College property for a prescribed period of time. Suspension is a severe sanction and the student forfeits tuition and fees along with room and board if a residential student and does not receive academic credit for the semester in which the suspension occurred. Students who are Disciplinary Suspended and wish to return to the College must first meet with The Director of Student Conduct and Community Standards to assess their readiness for readmission. Students who are Disciplinary Suspended with conditions and who wish to return to the College must meet with The Director of Student Conduct and Community Standards to verify the successful completion of the conditions. Disciplinary Suspension can last for one (1) to (4) semesters.

### **Deferred Disciplinary Dismissal**

This sanction is imposed when the hearing officer/board has found the student(s) responsible for a violation sufficient to warrant dismissal but feels that there are mitigating circumstances that warrant one final chance. Being found responsible for another violation during the period of deferred dismissal, no matter how minor, will result in immediate dismissal. Deferred disciplinary dismissal may last from one (1) to eight (8) semesters.

### **Disciplinary Dismissal**

A student who is dismissed (expelled) from the College is permanently separated from the community, prohibited from being on any property of the College and may never return to the institution. The student forfeits tuition and fees along with room and board if a residential student, as well as the academic credit for the semester in which the dismissal occurred. J. Residence Hall or Campus Restriction A student may be restricted from appearing in any or all of the residences, buildings, or grounds on campus if it is reasonably believed that the student poses a threat to the health or safety of the campus community. Other restrictions may be imposed such as denial of access to specified campus services or programs. A student may also be barred from the entire campus if the Chief Student Affairs Officer or designee reasonably believes the student poses a threat to the health, safety, or well-being of the College community.

### **Restitution**

If College property is damaged, the appropriate College department and/or personnel will make an assessment of the damage. The responsible student(s) may be billed as appropriate. Restitution for personal property cannot be resolved via the Student Conduct System.

## **Educational Programs & Services**

Educational Programs & Services such as Alcohol Education Programs, Drug Education Programs, Community Service, By-Stander Intervention Programs, reflection, or research papers, etc., may be used to supplement any other student conduct sanction. It is the sole responsibility of the student to bear any costs associated with these sanctions.

## **Administrative Directives**

To obtain any of the following, the student should contact the Dean's office at 716-664-5100.

### **No Contact Order**

A written directive prohibiting certain behaviors with a protected individual, either directly in person, by telephone, email, text message, or other electronic means of communication, or through a third party (other than an attorney). If the accused or respondent and a protected person observe each other in a public place, it is the responsibility of the accused or respondent to leave the area immediately and without directly contacting the protected person.

### **Cease & Desist**

A written directive to both parties prohibiting contact with each other, either directly or through a third party or directive to prohibiting one or both parties from engaging in a specific behavior.

### **Campus Restriction**

A student may be restricted from appearing in any or all of the buildings or grounds on campus if it is reasonably believed that the student poses a threat to the health or safety of the campus community.

### **Transcript Notations**

A student who has been suspended or expelled for any violation of the Conduct Code including but not limited to behavior that leads to the death or serious physical injury of another person, hazing, physical abuse, sexual misconduct, and, per New York State Education Law Article 129B, conduct that constitutes a crime of violence (including but not limited to sexual assault) as defined in the Clery Act will have a permanent notation placed on the student's official college transcript indicating the disciplinary suspension or expulsion. If a student withdraws from the institution while such a disciplinary matter is pending, a transcript notation will indicate that the student withdrew with student conduct charges pending.

The following transcript notations are used by Jamestown Business College:

- a. Temporarily suspended (date) pending code of conduct hearing
- b. Withdrew with conduct charges pending (date)
- c. Suspended after a finding of responsibility for a code of conduct violation (date) to (date)
- d. Expelled after a finding of responsibility for a code of conduct violation (date)

Transcript notations for a student who is suspended or who chose to withdraw with a pending conduct investigation will remain on a transcript for a minimum of one year. After one year's time, a student may request to have the transcript notation removed by filing an appeal with the Dean of Students or designee. Transcript notations for students expelled are permanent and cannot be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. Other disciplinary records maintained by the Office of Student Conduct and Community Standards are not reflected upon a student's academic transcript, but are maintained in the Office of Student Conduct and Community Standards in accordance with college policy.

### **Transcript Notation Appeals Process**

To file an appeal to have the transcript notation removed from an academic transcript a student must submit in writing to the Dean of Students or designee evidence of rehabilitation or other good cause for the transcript notation removal. Students who withdrew from the College prior to resolution of the conduct process will need to fulfill the sanctions found in absentia before being permitted to appeal. Appeal decisions will be provided in writing within thirty (30) calendar days of submission.